S. HRG. 100-810

RETIREMENT AND SURVIVOR ANNUITIES FOR BANKRUPTCY JUDGES AND MAGISTRATES ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON
COURTS AND ADMINISTRATIVE PRACTICE
OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1630

A BILL TO PROVIDE FOR RETIREMENT AND SURVIVORS' ANNUITIES FOR BANKRUPTCY JUDGES AND MAGISTRATES, AND FOR OTHER PURPOSES

OCTOBER 28, 1987

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Heflin, Hon. Howell (chairman of the subcommittee)	1
Grassley, Hon. Charles E.	14
DeConcini, Hon. Dennis	14
Thurmond, Hon. Strom	15, 16

PROPOSED LEGISLATION

S. 1630, a bill to provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes 3

CHRONOLOGICAL LIST OF WITNESSES

Merhige, Hon. Robert R., Jr., chairman, Subcommittee on Bankruptcy Administration, Judicial Conference, U.S. district judge for the Eastern District of Virginia 16

Statements of a panel consisting of the Honorable Otto R. Skopil, Jr., Chairman, Administration of the Federal Magistrates System, Judicial Conference of the United States, and senior judge, U.S. Court of Appeals for the Ninth Circuit; the Honorable Morey L. Sear, Chairman, Committee on the Administration of the Bankruptcy System, Judicial Conference of the United States, and U.S. district judge for the Eastern District of Louisiana; the Honorable Ralph E. Kelley, chief U.S. bankruptcy judge, Eastern District of Tennessee; the Honorable Harvey E. Schlesinger, president, National Council of U.S. District Magistrates, and U.S. magistrate for the U.S. District Court, Middle District of Florida; and the Honorable John J. Dilenschneider, chairman, Association of Former Bankruptcy Judges, Columbus, OH 23

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Dilenschneider, Hon. John J.:
- Testimony 138
- Prepared statement 141
  - Exhibits—Letters from former bankruptcy judges:
    - 1: E.H. Patton, Jr., October 19, 1987 147
    - 2: Herbert Katz, October 18, 1987 148
  - Response to Senator Thurmond's question 150

Kelley, Hon. Ralph H.:
- Testimony 56
- Prepared statement 58
  - Exhibit 1: Table of U.S. Bankruptcy Courts filings during the 12-month periods ended June 30, 1979, through 1987 67
  - Exhibit 2: List of bankruptcy judges who have left the bench from 1980 to July 31, 1987 (161) 68
  - Exhibit 3: "Keep Bankruptcy Judges on the Bench," article from the New York Times, September 23, 1987 71
  - Exhibit 4: Roster of the Association of Former Bankruptcy Judges, October 1987 72

Page

Kelley, Hon. Ralph H.—Continued
Prepared statement—Continued
Exhibit 5: "Promises Made, Promises Still Unkept: Restoration of Inflation-Induced Salary Cuts for Top Government Officials," a report to the Commission on Executive, Legislative, and Judicial Salaries, submitted by Kaye, Scholer, Fierman, Hays & Handler, November 3, 1986 82
Exhibit 6: Memo to the Honorable Gordon Humphrey, from the Congressional Research Service, the Library of Congress, subject: Salaries of Bankruptcy Judges, Special Trial Judges of the U.S. Tax Court, and U.S. Attorneys, February 19, 1987 121
Response to Senator Thurmond's question 125
Letter from the American Bankruptcy Institute, Washington, DC, to Hon. Howell Heflin, November 19, 1987 126
Merhige, Hon. Robert R., Jr.:
Testimony 16
Prepared statement 18
Schlesinger, Hon. Harvey E.:
Testimony 127
Prepared statement 129
Sear, Hon. Morey L.:
Testimony 45
Prepared statement 47
Attachment: Table of annualized cost for full-salary retirement provisions of S. 1630 55
Skopil, Hon. Otto R., Jr.:
Testimony 23
Prepared statement 26
Response to Senator Thurmond's question 38
Attachment: Cost Analysis of S. 1630 and H.R. 2586, by the Administrative Office of the United States 39

RETIREMENT AND SURVIVOR ANNUITIES FOR BANKRUPTCY JUDGES AND MAGISTRATES ACT OF 1987

WEDNESDAY, OCTOBER 28, 1987

U.S. SENATE,
SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:09 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Howell Heflin (chairman of the subcommittee) presiding.

Also present: Senators DeConcini, Grassley, and Thurmond.

OPENING STATEMENT OF HON. HOWELL HEFLIN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator HEFLIN. We will come to order.

Today the Subcommittee on Courts and Administrative Practice will hear testimony on S. 1630, which will enhance the retirement system for bankruptcy judges and magistrates. I am pleased to have the distinguished ranking member of this subcommittee, Senator Grassley, as well as Senator DeConcini join in sponsoring this legislation. Also, Senators Kassebaum, Cochran, Hatch, Johnston, Chiles, and Cohen have cosponsored the bill.

This legislation will provide a retirement system for magistrates and bankruptcy judges comparable to the retirement for territorial judges.

The responsibilities of magistrates and bankruptcy judges are different in character—bankruptcy judges are charged with deciding the rights of debtors and creditors, while magistrates, who serve as full-time judicial officers, may now try any civil case as long as the parties consent and the district court approves. In spite of this difference, the judgeships are considered to be of equal importance, and both require a high caliber of legal talent.

Unfortunately, the level of compensation for these judicial officers, including their retirement system, has not kept pace with the expansion of their responsibilities.

Since the U.S. Magistrate System was created in 1968 to replace the U.S. Commissioner System, the powers of district courts to assign matters to magistrates have been expanded greatly. District courts now have the power to assign duties to magistrates that are not inconsistent with the Constitution and the laws of the United States.

In 1984, in response to the Supreme Court decision of *Northern Pipeline Construction Company* v. *Marathon,* Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984. As a result of this legislation, bankruptcy judges were made adjuncts of the district courts. In the last Congress, we passed legislation which authorized 52 bankruptcy judgeships, which increased the number of bankruptcy judges by 25 percent. However, the increase in the number of judges in no way parallels the rising increase in the caseloads of bankruptcy courts.

The 1987 Annual Report of the Director of the Administrative Office of the United States Courts stated that the bankruptcy courts terminated 481,351 bankruptcy petitions during 1987. This represents more than a 34-percent increase over the number of filings terminated last year. At the same time, the pending caseload rose by 11 percent, reaching 808,504 on June 30, 1987.

Similar caseload demands are being made on the district courts, which have in turn placed greater demands on magistrates in an effort to meet the increased caseload. These cases demand not only time, but individual sacrifices on the part of magistrates and bankruptcy judges to give all parties a fair and judicious hearing.

In attempting to attract individuals to serve as bankruptcy judges and magistrates, it is becoming increasingly difficult not only to attract experienced individuals, but to retain those that are there. Congress recently enacted the Magistrates' Retirement and Parity Act, but this act only makes the retirement system for magistrates equal to that of the bankruptcy judges. The act does not cover all bankruptcy judges or magistrates. The current system for both groups is still inadequate.

This legislation would provide for retirement at age 65 on full salary if the bankruptcy judge or magistrate had served 14 years. The system would be a noncontributory retirement system in which a bankruptcy judge or magistrate with 8 or more years of service would receive a pension at age 65 based on the percentage that his or her years of service as related to 14 years. Bankruptcy judges currently serve 14-year terms. Full-time magistrates serve 8-year terms. The pension would cap at 14 years of service, at which time the retiree would be eligible for a retirement annuity receivable at age 65, equal to the salary of the office at the time the individual leaves office. Although cost-of-living increases are provided, they are limited so as not to exceed the salaries of active magistrates and bankruptcy judges.

This legislation would also include spouses and dependents of bankruptcy judges and magistrates within the Judicial Survivor Annuities Program which was enacted in the last Congress for article III judges. Judges choosing to participate in the Survivor Annuities Program would do so on a contributory basis.

Currently, bankruptcy judges are in a contributory retirement system similar to the Members of Congress. They contribute 8 percent of their salary, and their pension is computed by multiplying their years of eligible service times 2½ percent, and they can retire at age 62 with 5 years of service or at age 60 with 10 years of service.

[A copy of S. 1630 follows:]

II

100TH CONGRESS
1ST SESSION

S. 1630

To provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 7 (legislative day, AUGUST 5), 1987

Mr. HEFLIN (for himself, Mr. GRASSLEY, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates Act of 1987".

BASIC RETIREMENT PROGRAM

SEC. 2. (a) Chapter 17 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 377. **Retirement of bankruptcy judges and magistrates**

"(a) A bankruptcy judge or magistrate to whom this section applies who retires after serving at least 14 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (e), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to the salary being received at the time the judge or magistrate left office.

"(b) A bankruptcy judge or magistrate to whom this section applies who retires after serving less than 14 years but at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (e), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to that proportion of the salary being received at the time the judge or magistrate left office which the aggregate number of years of service bears to 14.

"(c) A bankruptcy judge or magistrate to whom this section applies who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (e), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to 40 per-

cent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14 years, bears to 14.

"(d) A bankruptcy judge or magistrate who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate retired or was removed.

"(e) A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84, of title 5.

"(f)(1) For purposes of calculating an annuity under this section—

"(A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and

"(B) each month of service shall be credited as one-twelfth of a year.

"(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires or is removed from office upon the sole ground of mental or physical disability, service of that individual as a United States magistrate to whom this section applies, if any, shall be included for purposes of calculating years of service under subsection (a), (b), or (c), as the case may be.

"(B) In the case of an individual who is a magistrate to whom this section applies and who retires or is removed from office upon the sole ground of mental or physical disability, service of that individual as a bankruptcy judge to whom this section applies, if any, shall be included for purposes of calculating years of service under subsection (a), (b), or (c), as the case may be.

"(g) This section applies to—

"(1) any bankruptcy judge appointed under—

"(A) section 152 of this title;

"(B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act

of November 6, 1978 (Public Law 95–598; 92 Stat. 2682); or

"(C) section 404 of the Act of November 6, 1978 (Public Law 95–598, 92 Stat. 2549); and

"(2) any United States magistrate appointed under section 631 of this title,

only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate.".

(b) The table of sections at the beginning of chapter 17 of title 28, United States Code, is amended by adding at the end the following new item:

"377. Retirement of bankruptcy judges and magistrates.".

(c)(1) A bankruptcy judge or United States magistrate in active service on the effective date of this Act shall, subject to paragraph (2), be entitled to, in lieu of the annuity otherwise provided under the amendments made by this section—

(A) an annuity under subchapter III of chapter 83, or under chapter 84, of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of subparagraph (B), and

(B) an annuity calculated under subsections (b) and (f) of section 377 of title 28, United States Code, as added by this section, for any service as a full-time bankruptcy judge or magistrate on or after October 1, 1979 (as specified in the election pursuant to para-

graph (2)), without regard to the minimum number of years of service as such a bankruptcy judge or magistrate, except that—

(i) in the case of a judge or magistrate who retires with less than 8 years of service, the annuity under subsection (b) of section 377 of title 28, United States Code, shall be equal to that proportion of the salary being received at the time the judge or magistrate leaves office which the years of service bears to 14, and

(ii) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the bankruptcy judge or magistrate in effect on the day before the retirement becomes effective.

(2) A bankruptcy judge or magistrate shall be entitled to an annuity under this subsection only if the judge or magistrate files a notice of that election with the Director of the Administrative Office of the United States Courts specifying the date on which service would begin to be credited under section 377 of title 28, United States Code, in lieu of chapter 83 or chapter 84 of title 5, United States Code.

(3) A bankruptcy judge or magistrate who makes an election under paragraph (2) shall be entitled to a credit under section 8342 or section 8424 of title 5, United States

Code, as the case may be, for any service which is covered under section 377 of title 28, United States Code, as added by this section, pursuant to that election, and with respect to which any contributions were made by the judge or magistrate under the applicable provisions of title 5, United States Code.

(4) With respect to any bankruptcy judge or magistrate receiving an annuity under this subsection who is recalled to serve under section 375 of title 28, United States Code—

(A) the amount of compensation which such recalled judge or magistrate receives under subsection (c) of such section shall be calculated on the basis of the annuity received under this section; and

(B) such recalled judge or magistrate may serve as a reemployed annuitant to the extent permitted in subsection (e) of section 375 of such title.

JUDICIAL SURVIVORS' ANNUITIES

SEC. 3. (a) Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (a)(1) is amended by—

(A) striking "or" at the end of subparagraph (D);

(B) adding "or" after the semicolon at the end of subparagraph (E); and

(C) inserting after subparagraph (E) the following:

"(F) a full-time bankruptcy judge or a full-time United States magistrate;"; and

(D) inserting after the semicolon at the end of clause (iii) the following: ", or who, in the case of a full-time bankruptcy judge or United States magistrate, notifies the Director in writing of his or her intention to come within the purview of this section on or before the date of an election to retire under section 377 of this title;".

(2) Subsection (a)(2) is amended by—

(A) striking out "and" at the end of subparagraph (D);

(B) inserting "and" after the semicolon at the end of subparagraph (E); and

(C) adding at the end the following:

"(F) in the case of a bankruptcy judge or United States magistrate, an annuity paid under section 377 of this title;".

(b) In the case of a bankruptcy judge or magistrate who elects an annuity under section 2(c), only service for which an annuity under subsections (b) and (f) of section 377 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 28, United States Code, as amended by subsection (a) of this section.

AMENDMENTS RELATED TO RECALL

SEC. 4. (a) Section 155(b) of title 28, United States Code, is amended—

(1) by inserting "section 377 of this title or in" after "annuity in"; and

(2) by inserting "which are applicable to such judge" after "title 5".

(b) Section 375 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "under the provisions of section 377 of this title or" after "was retired";

(2) in subsection (c) by inserting "under the provisions of section 377 of this title or" after "annuity provided"; and

(3) in subsection (g) by inserting "who retired under the applicable provisions of title 5" after "section".

(c) Section 636(h) of title 28, United States Code, is amended in the second sentence—

(1) by inserting "section 377 of this title or in" after "annuity set forth in"; and

(2) by inserting "which are applicable to such magistrate" after "title 5".

TECHNICAL AMENDMENTS

SEC. 5. Section 631(e) of title 28, United States Code, is amended—

(1) by striking out "(j)" and inserting in lieu thereof "(k)";

(2) by striking out "(i)" and inserting in lieu thereof "(j)"; and

(3) by striking out "(h)" and inserting in lieu thereof "(i)".

CONFORMING AMENDMENTS

SEC. 6. (a) Section 8334(i) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) Notwithstanding any other provision of law, a judge or magistrate who is covered by section 377 of title 28 or section 2 of the Retirement of Bankruptcy Judges and Magistrates Act of 1987 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate shall be entitled to a lump sum credit under section 8342(a) of this title.".

(b) Section 8402(c) of the United States Code, is amended by adding at the end the following new paragraph:

"(5) A judge or magistrate who is covered by section 377 of title 28 or section 2 of the Retirement of Bankruptcy Judges and Magistrates Act of 1987 shall be excluded from the operation of this chapter if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate shall be entitled to a credit under section 8424 of this title.".

EFFECTIVE DATE

SEC. 7. This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to bankruptcy judges and magistrates who retire on or after the date of the enactment of this Act.

○

Senator HEFLIN. I believe it is time the subcommittee took an in-depth look at the retirement system offered our judicial officers. I would like to welcome everyone to the hearing, and look forward to the testimony of this distinguished panel of witnesses.

Senator Grassley, do you have an opening statement?

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Yes, I do, but I don't believe I am going to read it. I think I will insert it, but summarize by saying that my interest in this legislation is directly related to the fact that I believe most people in this country get their acquaintance with the Federal judicial system through the bankruptcy courts. We should not give secondary consideration to having highly qualified people in this part of our judiciary.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

I am pleased to join my colleague and friend, Chairman Heflin, as a sponsor of this legislation. I thank him for scheduling these hearings, and understand that similar hearings were held in the House this morning.

We can all stipulate to the fact that a highly qualified and devoted judiciary is critical to the needs of our ever-expanding Federal legal system. I'd like to here speak specifically to the situation facing our bankruptcy courts.

Although we often fail to realize it, I think it's fair to say that no Federal court touches more individuals in our Nation than our bankruptcy courts. Nationwide, the bankruptcy caseload—already the largest of any Federal court—recently surged past 725,000 cases. This is more than double the number of cases of 6 years ago. By one estimate, the court's reach extends to more than $100 billion in corporate and individual assets and 35 million creditors.

More than raw numbers, bankruptcy courts are forced to make tough choices on the survival of entire industries. As just one example, I cite the recent enactment of the family farmer bankruptcy law, which I sponsored last year. So more than most, I appreciate the importance of the bankruptcy courts and the critical role they play in our legal system. In my own State of Iowa, we are lucky to have three dedicated and talented bankruptcy judges. Hopefully, we will soon have a fourth judge.

How can the Congress ensure that we will be able to keep them, as well as high-caliber magistrates, too?

One way is with a competitive salary. On this ground, however, the Congress simply cannot compete with the lucrative private sector. Another way is in the area of retirement and survivors' benefits. On this ground, Congress can reduce the disparity that now exists between bankruptcy judges, magistrates and others who serve the Federal judiciary for fixed terms.

I do not argue that this proposal is the only solution to what is clearly a problem for bankruptcy judges and magistrates. But I believe it may be a start. We live in a time of massive budget and trade deficits, calls for "sacrifice", and calls for economic "summits" to get our fiscal house in order. Thus, I am most concerned with determining the precise cost of this proposal.

I look foward to the testimony, and hope that this approach will meet with the committee's speedy approval. I thank the chairman.

Senator HEFLIN. Thank you. Senator DeConcini.

STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, thank you very much, and thank you for not only having these very important hearings but also for your detailed opening statement. I think it lays the case out so well. I believe our witnesses today are going to substantiate this and, demonstrate the need for legislation.

The importance of providing both the magistrates and bankruptcy judges an attractive retirement system I don't think can be overstated. I think we have been lax and long behind the curve. It is becoming increasingly more difficult to maintain and recruit highly qualified and experienced attorneys because of the lagging salaries and inadequate retirement benefits, a proposition which I am sure we will hear from some of the expert, fine judges and witnesses that are here today.

Additionally, both magistrates and bankruptcy judges have taken on considerable additional responsibilities in recent years. For example, magistrates now handle initial proceedings in criminal cases, references of civil and criminal pretrial matters from judges, trials of misdemeanors upon consent of defendants, and trials of civil cases upon consent of the parties.

Likewise, bankruptcy judges are responsible for some of the most complex cases which present some of the most difficult social and economic problems of this generation, and these decisions affect not just the creditors and the debtors, but society as a whole. We have seen many of these cases, and the logic and judgment of bankruptcy judges, to me, often, if not always, is equal to that of district judges.

In reviewing the testimony, I have noted with great interest the number of bankruptcy judges who have left the bench from 1980 to July of this year, and just in the State of Arizona we have lost substantial expertise in this area. Three of our most experienced judges have left, and although they have been replaced by very highly qualified individuals, I am just not too sure how long they will stay. I strongly suspect that history may repeat itself if this legislation is not passed.

Although salaries in private practice far exceed that which can be earned as a magistrate or bankruptcy judge, the challenge of the subject matter is what attracts the qualified people that we have today, the need for public service and the desire to do that. You can only test that kind of citizenship for so long.

These ladies and gentlemen who serve are entitled to a decent salary, decent facilities to work under, decent staffs, and certainly a decent retirement.

So, Mr. Chairman, thank you for taking the special interest that you have taken in this legislation. I think with your background and your heading up this legislation, we may see this on the floor before Christmas.

Senator HEFLIN. Thank you. Don't be too optimistic.

Senator Thurmond, I wanted to say, we would be glad to hear from you now.

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Thank you very much, Mr. Chairman. I think your opening statement covers it quite well, and I am not going to take time away from the witness. I would ask you now, Mr. Senator, that my statement go in the record.

Senator HEFLIN. No objection.

[The prepared statement of Senator Thurmond follows:]

PREPARED STATEMENT OF SENATOR STROM THURMOND

Mr. Chairman, I would like to commend you for holding this hearing to consider S. 1630, legislation which will alter the current retirement system for bankruptcy judges and Federal magistrates. S. 1630 would establish a retirement system similar to the current retirement system in place for Territorial judges.

Unquestionably, bankruptcy judges and magistrates play an important role in our Federal judicial system. Because of their vital role, an equitable retirement system is necessary to encourage exceptionally qualified individuals to seek these judgeships and serve for many years before retirement.

The focus of this hearing will be to evaluate the current retirement system in light of the one proposed by S. 1630. With the steady growth of litigation in our Federal system, we have placed a greater burden and greater responsibility on the shoulders of both bankruptcy judges and magistrates. Some believe that these enhanced burdens and responsibilities along with shortcomings in the current retirement system have contributed to the increased turnover rate among these judges in the last several years.

As we focus on the need for changes in the bankruptcy judges and magistrates retirement system, we must keep in mind current budgetary restraints. The effect of any changes in the retirement system of bankruptcy judges and magistrates must be examined in relation to its budgetary impact as well as other Federal retirement programs. As we undertake consideration of this legislation, this will provide important information that will enable us to act responsibly, equitably, and with fairness to all concerned.

I am confident that the distinguished panelists before us today will shed light on the current and proposed retirement systems so that we will have a deeper understanding of all the available options. I look forward to the testimony.

Senator THURMOND. Some time ago I asked to be a cosponsor. I don't know whether you got the message or not. If not, I ask unanimous consent that I be made a cosponsor now.

Senator HEFLIN. I didn't get the word. You will be made. And, staff, you didn't tell me.

We are delighted to have a panel today, and I understand that the Honorable Robert F. Merhige has a plane to catch. He is a U.S. district judge from the Eastern District of Virginia.

If you will come forward, Judge, we will be delighted to hear from you first, and then we will hear testimony from the rest of the panel.

STATEMENT OF HON. ROBERT R. MERHIGE, JR., CHAIRMAN, SUBCOMMITTEE ON BANKRUPTCY ADMINISTRATION, JUDICIAL CONFERENCE, U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

Judge MERHIGE. Thank you, Mr. Chairman, gentlemen, Senators. I am embarrassed somewhat to ask to be excused early, but I'm not going off on vacation. I have other judicial responsibilities, and I really have to catch a plane to New Mexico by 4.

Mr. Chairman, I have prepared and filed a statement, and rather than read that, I would ask that it be made part of the record, and then I would like to elaborate just a little bit on that statement, and then respond to any questions that any of the members may have if I am capable of doing it.

As you have already stated, I am a U.S. district judge and have been for some 20-some years. I do not profess to be an expert in bankruptcy, but I must say that I am learning fairly rapidly since I am presiding over the *Dalcon Shield* v. *A.H. Robbins* case, which I am told is one of the larger bankruptcy cases in the country. I am also chairman of the Subcommittee of the Judicial Conferences Committee on the Administration of Bankruptcy.

I have really gotten a much better view of the caliber of bankruptcy judges that we have and that we need since I have been involved in the *Robins* case, because I sit with a bankruptcy judge almost on a daily basis, and have for the last 2 years.

The bankruptcy bar has changed so dramatically in the past 15 or 20 years that it is no longer just an adjunct of some law firm. It is a very major portion of a law firm. The fees that the lawyers charge are well earned, I might add, but they border on the obscene to people like me as a district judge.

On the other hand, we are asking people with very, very special talent—and I think it does take special talent to be a bankruptcy judge—to stay on the bench when salary has been less than it was for the people who appear before a bankruptcy judge, such as U.S. attorney, or the U.S. trustee.

Now, I hope and I think that that situation has alleviated itself, and we are now looking at this bill which hopefully will take care of the retirement.

The judge that I sit with in the *Robins* case, if he were to retire—that would be at age 65 after 15 years—my understanding is that his retirement would be less than 35 percent of the salary as it now stands.

We can not afford to have mediocre judges in any of our courts, and the bankruptcy court has now become—bankruptcy law has become a special breed, so to speak. They are dealing with businesses, large businesses, that affect literally thousands and thousands of people, as in this *Robins* case. It affects perhaps 250,000 to 300,000 people.

It takes men and women of sophistication and some experience. I understand that the job has become so unattractive that we are now losing bankruptcy judges after they have only been on a few years. I am told today, as a matter of fact, of a young man who was appointed a bankruptcy judge 3 years after he was out of law school. Now, he may be a very special person. I hope he is, and I suspect he is. But it seems to me that we do need people with more experience than that, and I am hopeful that this bill, this retirement bill, will make up for a lot of the past what I think have been injustices to the bankruptcy judges.

I don't want to get on to what article III problems are. All article III judges thought that we ought to have gotten more the last time, and so forth, but no matter what we got, I guess we would have felt that way. And if we were not treated fairly, and I am not saying that we weren't, the bankruptcy judges were affirmatively treated unfairly, I think by accident.

I think the system requires a bill of this nature, not only in fairness, but so that we can get and keep the most qualified people available.

And I thank you all very, very much for permitting me to appear, and I would be glad to respond to any questions. I am not sure that I will know the answers, but I would make an effort.

[The prepared statement of Judge Merhige follows:]

PREPARED STATEMENT OF ROBERT R. MERHIGE, JR.

SUMMARY

The courts have made a real effort towards merit selection of bankruptcy judges and magistrates. It is difficult to get the best, for we have little to offer.

The salary structure is kept at a rate lower than government officials such as United States Attorneys and United States Trustees who appear before these judicial officers.

Bankruptcy judges and magistrates have fixed terms of relatively short duration. They suffer uncomfortable quarters and inadequate staff support. Many exceptionally well qualified people refuse to consider appointment because of the financial sacrifices required.

When bankruptcy judges and/or magistrates resign, the transition increases the financial burden upon the Government and interfers with the administration of justice.

* * *

Mr. Chairman and members of the Committee, my name is Robert Merhige and I am a United States District Court Judge for the Eastern District of Virginia. I appear before you today in my capacity as Chairman of the Judicial Conference's Subcommittee on Bankruptcy Administration. But I also appear before you as a judge with some 20+ years on the bench and as a judge who is presently participating in one of the largest bankruptcy cases in the federal court system.

From both those vantage points, the chair of the Committee and the bench in Richmond, I do not see anything but stormy seas ahead for the goal of obtaining and retaining the highest quality magistrates and bankruptcy judges.

In recent years, and with the support and urging of this committee, the courts have carried out a program of merit

selection of bankruptcy judges and magistrates. We in the judiciary and you in the Congress are committed to selecting quality people to fill these increasingly demanding positions. But quality never comes cheap. In an open marketplace there are many bidders for the best and few for the average. Yet, when we seek the best, we have precious little to offer.

We have a salary structure that is capped at a rate lower than the United States Attorneys and United States Trustees who appear before these judicial officers. We have, for our bankruptcy judges and magistrates, fixed terms of relatively short duration so they do not even have the security often associated with government service. We respect and admire these men and women, but we cannot say that the title bankruptcy judge or magistrate provides significant status in the community at large. As courthouse space gets tighter and tighter, we cannot even promise comfortable quarters and adequate staff support.

And the people we are seeking to attract are not fresh faces right out of law school. They are not persons for whom the prospect of service as a judicial officer holds out the promise of reaching middle age ready to move on to a partnership in a blue chip law firm. We are seeking people in mid-career. People who have already established themselves as lawyers and as people, whose competency and integrity we can evaluate thoroughly. We are asking them to give up the comfortable and the secure for a new career, with many positive aspects to be sure, but with a salary quite often lower than their current one and with pension benefits that cannot be compared economically with the benefits of private practice.

Many are resisting the temptation to join us in this work. Many more accept the challenge and find that the salary and benefits are not sufficient to make up for the lost time with their families, the stress, and the lost opportunities in the outside world.

The bill you are now considering (H.R. 2586/S.1630) is

one important step in finding and keeping the best-qualified people. It provides a pension system that places these officials in the mid-rank of the federal judiciary along with the territorial judges. It is generous in its terms when compared to other federal pension systems, but is parsimonious in requiring deferment of retirement until age 65.

You have seen a report on the projected costs of the system and I will not extend this hearing by repeating those figures. But I will point out that they do not tell the whole story. When a bankruptcy judge or magistrate quits his or her position, a cost is incurred that does not readily appear on the accountant's ledger. When a bankruptcy judge resigns in the middle of a six-year bankruptcy case, the system suffers a very real loss in time and resources. When a magistrate leaves abruptly and is replaced by a new one, time is lost and, inevitably, mistakes are made. So long as we are mortal we will never eliminate turnover, but it is a reality recognized by every standard text in business management that turnover costs money. I am not able to put that cost to you in hard dollars. I could make estimates. Some say that it takes five years for a bankruptcy judge to begin to operate at full capacity. I have no quarrel with that number.

I ask you when you consider this bill to look at the numbers provided to you. See what they mean in terms of the total judiciary budget. Compare them to the cost of a hundred other items and look hard at what these figures mean for the total budget.

But when you are done with that, look at what you buy for this relatively small amount of money. You buy a system of justice whose quality cannot be matched. A system that provides your constituents and all litigants with prompt and just results. A system staffed by people that each of us can admire for their talents and their industry. If you do that, I am hopeful that you will give your whole-hearted support to this measure.

Senator HEFLIN. Senator Grassley, do you have a question?
Senator GRASSLEY. Not for this witness, Mr. Chairman.
Senator HEFLIN. Senator DeConcini?
Senator DECONCINI. No questions, Mr. Chairman.
Senator HEFLIN. Senator Thurmond? Do you have any questions of this witness?
Senator THURMOND. Judge, glad to see you.
Judge MERHIGE. Good to see you again, Senator.
Senator THURMOND. Honored to have you, of course.
Judge MERHIGE. Thank you, sir.
Senator THURMOND. Traditionally, the salaries paid to Federal judges have been lower than those which could be earned in the private sector. The reforms proposed on S. 1630 will not completely close this gap. Can any member of the panel briefly comment on why the Federal Government should compete with the salaries and benefit plans provided by private law firms?
Judge MERHIGE. No, I don't think they should, Senator, and I am certainly not suggesting that the Government ought to compete with private law firms. There is more to being a judge than just the salary. The salary and the retirement, of course, is necessary, so that we can take care of our families, but there is the aspect of service, which is extremely important, and it is why most of us have stayed on the bench, so that we could give a service.
It hasn't been easy, but it has been more difficult for the bankruptcy judges because they simply have not kept par even with their fellow judiciary members.
Senator THURMOND. As a matter of fact, the bankruptcy judges and the magistrates are really paid less than most lawyers make in private practice after, say, 3 or 4 years.
Judge MERHIGE. Senator, if I may, less than that. I have a law clerk who just left me last month, and I am delighted for her, but she is starting out at $78,000 a year here in Washington, DC, which is more than our bankruptcy judges receive.
As a matter of fact, when she told me that and asked me what I thought about it, I must tell you that I said to her, "I think you ought to go back and see what kind of a deal you can make for an old judge and a young law clerk." I haven't heard from her; apparently they just wanted the young law clerk.
Senator THURMOND. Judge, do you feel that this bill is adequate, or do you have any suggestions for any changes? As long as we are going to pass this bill, and I predict it will pass, and I think it ought to pass, do you have any suggested modifications? If so, I would like to hear them.
Judge MERHIGE. I think it is all right the way it is, Senator. The Judicial Conference has looked at it; I know the Bankruptcy Committee has looked at it. My own view, and I think that it is the prevalent view, is that if this bill passes along with the salary bill that is under consideration, that we will have gone a long way toward satisfying the needs of our bankruptcy judges and our magistrates for a long, long time, which is not to say, sir, that I would discourage you from giving them more. That is understandable.
Senator THURMOND. If this bill passes, what will be the difference between a district judge's salary and a bankruptcy judge's or magistrate's salary?

Judge MERHIGE. Well, if the pay bill passes, the magistrates and the bankruptcy judges will receive, I believe, 92 percent of whatever the district judge's salary is.

Senator THURMOND. In other words, it will be based on that.

Judge MERHIGE. Yes, sir. Yes, sir.

Senator THURMOND. Ninety-two percent of whatever the district judge receives.

Judge MERHIGE. Right. Now, the retirement, of course, would be 100 percent after you have been on 14 years and reached 65.

Senator THURMOND. Do you have any suggestions now of any changes, or do you still feel that is adequate?

Judge MERHIGE. I have no suggestions for any changes whatsoever, sir. I am just hopeful that we can get this.

Senator THURMOND. Thank you very much. We appreciate your presence.

Judge MERHIGE. Thank you. I thank you.

Senator HEFLIN. This bill does not address salaries.

Judge MERHIGE. No, sir, it does not.

Senator HEFLIN. All right. Thank you, sir. We appreciate your testimony and hope that you catch your plane.

Judge MERHIGE. Well, if I may be excused, I thank you all for having me here.

Senator HEFLIN. Don't vacation too much down in New Mexico.

Judge MERHIGE. I was about to say—I will be making a talk to the Multi-District Panel at 8:30 tomorrow morning, and I will be on an airplane back to Richmond at noon tomorrow.

Senator DECONCINI. Stay over, Judge. Stay over the weekend.

Judge MERHIGE. I wish I could, Senator. Thank you.

Senator HEFLIN. All right. Now, I believe we have the remaining people who do not have to catch planes. The first is the Honorable Otto R. Skopil, who is the Chairman of the Administration of the Federal Magistrates System of the Judicial Conference of the United States, also senior judge, U.S. Court of Appeals for the Ninth Circuit. We are delighted to have Judge Skopil here.

The next is the Honorable Morey L. Sear, the Chairman of the Committee on the Administration of the Bankruptcy System, Judicial Conference of the United States, U.S district judge for the Eastern District of Louisiana.

The next is the Honorable Ralph H. Kelley, chief U.S. bankruptcy judge, Eastern District of Tennessee; and the Honorable Harvey E. Schlesinger, President of the National Council of the U.S. District Magistrates, U.S. magistrate for the U.S. District Court, Middle District of Florida; and the Honorable John J. Dilenschneider, the Chairman of the Association of Former Bankruptcy Judges, Columbus, OH.

I suppose if you will come forward, Judge Skopil, and if you will start, we would appreciate it.

We would appreciate it if you would summarize your statements. The whole statements will be made part of the record, and you're in pretty good shape; don't overdo it.

STATEMENTS OF A PANEL CONSISTING OF THE HONORABLE OTTO R. SKOPIL, JR., CHAIRMAN, ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM, JUDICIAL CONFERENCE OF THE UNITED STATES, AND SENIOR JUDGE, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT; THE HONORABLE MOREY L. SEAR, CHAIRMAN, COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM, JUDICIAL CONFERENCE OF THE UNITED STATES, AND U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA; THE HONORABLE RALPH H. KELLEY, CHIEF U.S. BANKRUPTCY JUDGE, EASTERN DISTRICT OF TENNESSEE; THE HONORABLE HARVEY E. SCHLESINGER, PRESIDENT, NATIONAL COUNCIL OF U.S. DISTRICT MAGISTRATES, AND U.S. MAGISTRATE FOR THE U.S. DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA; AND THE HONORABLE JOHN J. DILENSCHNEIDER, CHAIRMAN, ASSOCIATION OF FORMER BANKRUPTCY JUDGES, COLUMBUS, OH

Judge SKOPIL. Thank you very much, Senator Heflin.

As indicated, my name is Otto R. Skopil, Jr. I am a senior judge of the U.S. Court of Appeals for the Ninth Circuit. I was a former chief judge of the U.S. District Court for the District of Oregon. I have served on the United States Judicial Conferences Committee on the Administration of the Magistrate System since 1977, and have chaired that committee since 1980.

I appreciate that the written statement I have prepared and have filed with committee will be made a part of the record.

I really appreciate the opportunity and the invitation to participate in these hearings. I believe the retirement and survivors' benefits for bankruptcy judges is a very, very important bit of legislation.

I appreciate being here for two reasons, first to express my appreciation and thanks not only to this committee but to Congress as a whole for the foresight they had in the enactment of the 1976 and 1979 amendments. I think most of the members of this committee were here at the time of the 1979 amendments, and some go back to the 1976 amendments.

I am also grateful for the opportunity to discuss the proposed retirement and survivors' benefit legislation which is presently before you, S. 1630. I believe, to maintain the quality and the productivity of magistrates, it is absolutely necessary that we provide some future financial security for them.

Much has happened since I appeared to testify on those 1976 and 1979 amendments. The bottom line result is far beyond the expectations I had when I was here and testified.

The Federal Magistrates Act of 1968 and the amendments of 1976 and 1979, I firmly believe, brought to our judiciary one of the greatest improvements in providing an efficient judicial process. It provides the highest quality of justice in the shortest period of time at the least expense to the litigants and the taxpayers.

A review of the statistical information I have supplied, on page 8 of my written statement, reveals the tremendous contribution the magistrates have made during the last 8 years. I think it is interesting, in reviewing those, that they have provided additional judges' time by trying 95,000 misdemeanor cases; by trying 4,900

civil cases, with consent, in the last year; not to mention the other half million matters that they have considered during that same period of time.

If we were to evaluate that in judges' time I suppose our Federal judiciary would be about half again as big. We thank you for your foresight in providing those 1976 and 1979 amendments.

I think the success of the Magistrate System is really attributable to about six factors. First is the increased jurisdiction provided by the 1976 and 1979 amendments. The other is the strong congressional support that the magistrates concept has received. Since I have been a part of the Committee on the Administration of the Magistrate System, I do not recall any budget request that was refused to provide additional magistrates to assist in the voluminous calendars that we are encountering.

And, of course, the U.S. Judicial Conference, with its enthusiastic leadership, has been another great factor in providing that success.

Over the years—I think there had been some questions way back—we have expanded the utilization of magistrates by judges. It has been a slow process. It has been an educational process to go ahead and inform new district judges and the older district judges, as they perform their functions, what the magistrates can do to assist them and the litigants in resolving the disputes that are before them.

And the last two things, which I think are the ones that we are concerned about today—one is the magistrates have to be accepted by the bar, the trial bar, in order to have a successful magistrates program, and certainly the last, and the most important, is that the quality of the magistrates is extremely important in the success we have attained up to this time and I think is absolutely necessary as far as the future of the Magistrate System is concerned.

The competency of the magistrate pretty well dictates his or her productivity and use by the district judges. To achieve the greatest use of magistrates, it is imperative that their competency and ability be recognized not only by the judges of the district court which they support, but also by the trial bar. This is indicated by the fact that in at least 4,900 civil cases during the last year, the trial bar has consented to trials by magistrates.

To accomplish this, the applicant certainly has to be competent. They have to be mature in their legal background and experience, and to attract quality people, we are in direct competition with the private sector of the legal profession. It's apparent that we can not compete on a salary basis. Presently we are unable to compete in the area of future financial security, but I do believe that we have here, in this proposed legislation, an attractive program for people to come in and serve as judicial officers.

It is interesting to note that under the present plan of retirement for magistrates, either under the Civil Service Plan of under FERS, that they would have to serve approximately 40 years in order to receive the same retirement that the territorial judges and the tax court judges receive.

Civil Service and FERS is not geared for judicial officers; it is geared for long-time government career people. That was the original intent.

Our concern now is the age of the applicants for magistrate position is decreasing, agewise. During the last year, the average age of the applicant for new magistrate positions was 39 years of age.

Age alone certainly does not determine competency, but as far as acceptance by the bar, it is a very valuable factor that the experienced trial lawyer is going to consider before he or she consents to a trial by a magistrate involving substantial sums of money and very complex issues. We have to attract people who have had greater legal experience. We in effect have been prohibited from that area of the profession. We cannot offer them anything they can really rely on for their current needs and for their future security.

I should say that, in addition, during that same period of time—that is, from 1980 to the present time—there have been 68 magistrates who have resigned because—at least, we infer—for further financial gain and a greater sense of security. Twenty-three have retired, 17 of whom were less than 70 years of age, and out of that total number of magistrates serving of 280, you can see we have had a loss of 30 percent of our magistrate support staff.

I think these trends require our attention, and I am very thankful that this proposed legislation is being considered by this subcommittee and by Congress. We have unanimity as far as the support of this bill is concerned. The United States Judicial Conference has expressed itself by resolution favoring it, and, of course, as you will hear, both the National Conference of Bankruptcy Judges and the National Council of Magistrates will indicate their feeling about the need for this legislation.

So I close by saying thank you for the past support you have given to us, the magistrates. I solicit your favorable consideration of this pending legislation. I am also happy to respond to any questions that may assist.

[Submissions for the record follow:]

PREPARED STATEMENT

OF

JUDGE OTTO R. SKOPIL, JR.
CHAIRMAN

COMMITTEE ON THE
ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

SUMMARY

The Magistrates System has proven to be one of the Judiciary's most important tools in dealing with its burgeoning caseloads. As the courts' caseloads have grown to record levels in recent years, magistrates have been called upon to play an increasingly important role in our system of justice.

Magistrates conduct approximately one-half million judicial proceedings each year in lieu of district judges. Without a cadre of highly-competent magistrates to perform these duties, we would have but two choices: to permit our system of justice to collapse, or to expand the number of article III judges at a far greater cost to the taxpayer.

The success of the system is dependent upon the recruitment and retention of experienced and highly-qualified attorneys.

The courts' ability to recruit and retain magistrates has been crippled by the inadequacy of civil service pay and retirement benefits, which are not appropriate for judicial officers who should be recruited from the ranks of experienced attorneys in the middle of successful legal careers.

It is recognized that the Government will never be able to compete with the private sector in pay. This legislation, however, would establish a retirement system which would at least improve the recruitment of highly-qualified attorneys to serve for fixed terms of office in their 40's and 50's by providing them with a satisfactory pension at age 65. This is in contrast with the existing civil service systems which are designed for career civil servants who often begin their government service in their 20's and retire in their mid-50's.

The proposed bill for magistrates and bankruptcy judges is consistent with the traditional treatment of virtually all other federal judicial officers. The pension provided under this bill is fair and reasonable, particularly in light of its moderate costs as estimated by the Administrative Office. This bill provides the Judiciary with the critical means to retain and attract the best-qualified attorneys and would stave off a far more costly deterioration of this key judicial office.

* * *

Mr. Chairman, I am Otto R. Skopil, Jr., senior judge on the Court of Appeals for the Ninth Circuit, a member of the Judicial Conference Committee on the Administration of the Federal Magistrates System since

1977, and its chairman since 1980. I am here today to present comments on behalf of the Judicial Conference on legislation (S. 1630) which would provide magistrates and bankruptcy judges with retirement coverage similar to that provided to territorial judges. My comments focus upon matters affecting magistrates.

Let me begin by expressing my appreciation of your willingness to conduct these hearings. The success of the magistrates system has reflected, to a very large extent, the efforts of this Subcommittee and the full Senate Committee on the Judiciary. The bill before you represents an important step in maintaining and improving the magistrates system.

My initial remarks are intended as an overview of the relevant issues which I will follow-up with more details. The retirement benefits for magistrates under S. 1630 have been proposed and supported strongly by the Judicial Conference since 1982. Under the provisions of the bill, a magistrate would be entitled at age 65 years and after the completion of 14 years of service to an annuity equal to the salary of the position. In addition, magistrates would be eligible to participate in the Judicial Survivor's Annuity System, which is a plan identical to the plan covering district judges. The cost of the legislation as estimated by the Administrative Office appears reasonable and moderate, particularly in light of its beneficial effects.

This legislation is necessary to attract highly qualified attorneys to the position of federal magistrate. Over the years, the demands and responsibilities of the position have increased dramatically. Today's magistrates perform a great variety of functions which are indispensable to the efficient operation of the federal judicial system. Absent a highly competent corps of magistrates in whose abilities the district judges have confidence, the immense workloads of the courts would simply overwhelm the federal judiciary.

While the demands and responsibilities of the office have escalated, the pool of higher-experienced candidates has narrowed. Fewer and fewer magistrates now assume office in their forties and early fifties, ages at

which attorneys are often at the peak of their productivity and careers. For example, unlike other years when about one-third of the newly appointed magistrates were 45 years of age or older, only 1 of the 17 magistrates appointed in the past year had attained that age. Moreover, the median and average ages of the 17 full-time magistrates appointed since October 1986 are lower than in prior years. Although not indicative of a diminution in the quality of candidates, this preliminary data is worrisome and may portend a growing trend toward the appointment of less experienced magistrates.

Still fewer attorneys leave a position in a private law firm to accept the office. In fact, appointments of attorneys from private law firms have comprised a minority of newly selected magistrates each year since 1982. Approximately 63% of the appointments have been drawn from the government or public sector ranks. This concentration reflects the Judiciary's continuing inability to attract competent attorneys to the office of magistrate from all parts of the bar.

The position itself offers work which is stimulating and challenging to attorneys in their mid-careers. This advantage is offset by the growing inadequacy of the remuneration of the position. The present retirement system renders it virtually impossible for a magistrate appointed in mid-career to earn a suitable pension. Likewise, the salaries paid to magistrates can not compete with the private sector. These factors effectively preclude the Judiciary from attracting talented attorneys from private practice.

The existing retirement provisions threaten to reverse the important strides made in the development of the system. In particular, the Congressional objective underlying the 1979 legislation which mandated the promulgation of stricter selection standards requiring public notice of all vacancies and the establishment of merit selection panels has not been fully realized. The limited success in attracting candidates from all ages and segments of the bar, especially from the private law firms, has frustrated the Congressional intent of ensuring that only the best

qualified attorneys are appointed as magistrates. The enhancement of benefits under the proposed "14-year" retirement plan offers a real opportunity to open the position to a wider range of the bar and reassert the importance of this office. Ever mindful that the job demands talents which are at a premium in the marketplace, the time to act is now.

As part of the recognition of the enhanced role and responsibilities of the office of magistrate, Congress enacted a "catch-up" retirement bill recently which provided those incumbent magistrates covered by the Civil Service Retirement System with benefits identical to those provided to bankruptcy judges in 1984. I would like to express the gratitude of the Judiciary for your efforts in the passage of that legislation.

Most of the magistrates appointed after 1983 (already numbering about 100), however, are mandatorily covered, along with all other federal employees, under the new Federal Employees' Retirement System Act. These new magistrates are entitled only to 1% of their final salary for each year of service, to social security benefits, and to returns from contributions to the Thrift Savings Plan. In addition, unlike the typical federal employee, magistrates are appointed only after acquiring sufficient experience and are less able to accumulate the number of years of service that a career employee gathers. The shorter period of service results in a lower annuity. Even under the "catch-up" retirement bill, this imbalance is not corrected.

The economic hardships faced by magistrates are aggravated by the salary of the position which continues to lag behind the salaries in the private sector. Recent salary adjustments notwithstanding, the disparity in incomes between magistrates and their colleagues and the erosion in the pay of the office due to years of inflation discourage potential candidates, particularly well-experienced attorneys, from the office.

The inadequacy of the present retirement benefits and the lagging salary of the position now pose an unacceptable obstacle to maintaining and attracting attorneys qualified to hold this office. Certainly, many well-qualified magistrates and candidates will remain or seek the office

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notwithstanding the economic hardships. Just as certainly, many others will leave or not apply.

The financial sacrifices newly appointed magistrates are asked to accept jeopardize the painstaking step-by-step work done by Congress in building the magistrates system. The enactment of the "14-year" retirement bill would permit the Judiciary to expand its recruitment of attorneys necessary to fulfill the responsibilities of the office. The bill will provide magistrates with benefits more appropriate for the demands of a judicial office. In addition, the legislation offers substantial financial incentives to incumbent magistrates who have acquired valuable experience on the bench to remain in office. Unlike the present government pension system which entitles a magistrate to an unreduced annuity as early as 55 years of age and to a reduced annuity as early as 50 years of age, no enhanced benefits are payable under the "14-year" retirement plan until the magistrate attains 65 years of age. Leaving office prior to age 65 results in a lower benefit under this legislation, since the amount of the annuity is based on the salary of the position at the time of separation.

* * * * * * * *

I would like to go into greater detail on some of the points I have raised.

A. Office of United States Magistrate

A United States magistrate is a judicial officer of the United States district court who is appointed by majority vote of the judges of the court pursuant to regulations promulgated by the Judicial Conference of the United States. A full-time magistrate serves for a term of eight years. Removal from office during a term is permissible only under very limited circumstances.

The office of United States magistrate was established by the Federal Magistrates Act of 1968 and was built upon the foundation of the 175 year-old United States commissioner system. Commissioners had been used in

the federal courts to try petty offense cases committed on federal property, to issue search and arrest warrants, to determine bail for federal defendants, and to conduct other initial proceedings in federal criminal cases. The Federal Magistrates Act was enacted by the Congress to create a new federal judicial officer who would: (1) assume all the duties formerly exercised by the commissioners; and (2) conduct a wide range of judicial proceedings to expedite the disposition of the growing civil and criminal caseloads of the United States district courts.

The jurisdiction which a United States magistrate exercises is the jurisdiction of the district court itself, delegated to the magistrate by the judges of the court under statutory procedures. In 1976, Congress amended the Magistrates Act, authorizing a district judge to designate a magistrate to handle virtually any pretrial matter in the district court. The Magistrates Act was again amended in 1979, authorizing magistrates to exercise case-dispositive jurisdiction, including trials by jury, over any civil case pending in the district court upon consent of the parties. The amendments also expanded the authority of a magistrate to handle all misdemeanor cases with or without a jury. An extensive body of law has developed supporting the legislative expansion of the authority of magistrates. The courts of appeal have upheld the authority of a magistrate to conduct civil and misdemeanor trials upon the consent of the parties.

Today, a magistrate's duties fall generally into five broad categories:

1. Initial Proceedings in Criminal Cases
2. References of Civil and Criminal Pretrial Matters from Judges
3. Trial of Misdemeanors Upon Consent of the Defendant
4. Trial of Civil Cases Upon Consent of the Parties
5. Any Other Duty Not Inconsistent with the Constitution and Laws of the United States

During the year ended June 30, 1987, magistrates performed nearly one-half million duties. In particular, magistrates conducted over 134,000

preliminary proceedings in felony cases; handled more than 170,000 references of civil and criminal pretrial matters; reviewed more than 6,500 social security appeals and more than 27,000 prisoner filings; and tried more than 95,000 misdemeanors and more than 4,900 civil cases on consent of the parties.

A summary of the work performed by magistrates for the past several years is set forth on the next page.

The caseloads of district judges have increased dramatically since the establishment of the magistrates system. More judges have been needed to handle these cases, and the Congress has responded by authorizing additional judgeships. The number of judgeships clearly would have been greater if the district judges did not have the assistance of magistrates. During the year ended June 30, 1970, the year the magistrates system became operational, the 401 authorized district judge positions (including territorial judges and temporary positions) had an average total caseload of 317 civil and criminal cases (273 on a weighted caseload basis); they terminated an average of 292 cases. The number of authorized district judgeships has grown to 575, and during the year ended June 30, 1987, each of these positions had an average caseload of 466 civil and criminal cases (461 on a weighted basis); they terminated an average of 462 cases. The assistance provided by magistrates to the district judges is one of the primary reasons that the Federal district courts have been able to cope with the rising caseloads experienced since 1970 and improve their productivity so dramatically.

The General Accounting Office acknowledged the contributions of magistrates to the court's increased productivity in their 1983 report to Congress (Potential Benefits of Federal Magistrates System Can Be Better Realized). Noting that the rate of civil case terminations per judgeship increased dramatically since the implementation of the magistrates system nationwide, the report concluded that "(a)lthough the magistrates system may not be the sole reason for this increased production, it is clearly a major contributor."

Table 11 *
Matters Disposed of by U.S. Magistrates
1977 and 1981 through 1987

Activity	1977	1981	1982	1983	1984	1985	1986	1987
Trial Jurisdiction Cases	103,061	86,152	86,725	93,513	84,475	90,757	92,269	95,988[1]
Misdemeanors Other Than Petty Offenses	17,181	14,208	13,589	14,504	11,276	13,779	12,298	12,896
Petty Offenses	85,880	80,944	73,136	79,009	73,199	76,978	79,971	83,092
Preliminary Proceedings	105,677	92,359	88,458	102,450	109,337	120,143	131,070	134,091
Search Warrants	5,203	5,442	5,170	5,555	7,372	9,776	11,202	11,744
Arrest Warrants/Summonses	20,467	11,634	11,702	12,010	12,401	13,178	14,384	14,983
Initial Appearances	44,210	40,150	38,677	40,108	40,209	44,379	45,385	45,571
Detention Hearings	--	--	--	--	--	4,167	9,444	9,708
Bail Reviews	7,975	6,829	6,301	6,408	6,579	6,051	6,876	7,140
Preliminary Examinations	5,502	3,570	4,850	4,681	4,854	4,922	5,588	6,104
Grand Jury Returns	521	2,626	3,082	3,179	3,466	3,816	4,188	4,110
Arraignments	21,799	18,981	21,296	22,995	23,646	24,826	27,734	28,827
Other	--	3,128	4,580	4,514	6,810	7,028	6,269	5,904
Additional Duties	74,678	122,572*	138,903*	165,506*	179,807*	205,692*	226,575*	231,029
Criminal	17,966	25,098*	27,958*	29,252*	29,957*	32,670*	40,311*	41,515
Motions (A)	7,301	16,547	17,799	18,991	20,637	22,668	26,687	28,379
Motions (B)	--	2,105	2,320	2,339	2,182	2,098	2,731	2,871
(Evidentiary Hearings)	--	857	975	916	997	1,146	1,337	1,452
Pretrial Conferences	4,787	3,199	3,214	3,529	2,900	2,837	3,017	3,622
Calendar Calls	--	884	857	700	546	1,142	1,727	1,666
Other	5,898	2,506	2,793	2,777	2,695	2,779	4,812	3,525
Civil	48,175	82,585*	95,292*	118,574*	132,784*	154,085*	162,389*	162,512
Pretrial Conferences	22,787	23,109	28,314	29,895	33,207	36,895	40,419	45,167
Motions (A)	17,687	43,891	51,970	65,742	72,424	84,529	92,047	94,722
Motions (B)	--	7,324	6,180	7,071	6,401	6,988	7,623	7,777
(Evidentiary Hearings)	--	928	898	863	1,091	1,298	1,238	1,532
Social Security	3,449	4,101	4,532	6,588	10,534	14,101	11,646	6,714
Special Masterships	546	564	588	545	599	684	1,079	1,509
Calendar Calls	--	812	1,174	912	967	1,289	2,174	2,173
Other	3,706	2,056	1,836	7,158	7,561	8,521	6,163	2,918
Prisoner Litigation	8,515	14,817	16,551	18,543	18,157	20,235	23,875	27,002
(Evidentiary Hearings)	--	(778)	(1,162)	(1,089)	(1,249)	(1,132)	(1,127)	(1,201)
State Habeas	4,208	5,513	5,980	5,632	5,450	6,172	6,820	7,184
Federal Habeas	1,529	1,864	2,113	2,350	2,345	2,290	2,499	2,589
Civil Rights	2,778	7,460	8,478	10,561	10,362	11,773	14,556	17,229
Civil Consent Cases	--	1,933	2,452	3,127	3,548	3,717	4,960	4,970
Without Trial	--	1,322	1,627	2,237	2,697	2,924	3,976	4,008
Jury Trial	325[2]	181	282	307	305	308	372	459
Non-Jury Trial	--	430	543	583	544	485	612	503

* Revised.
-- Not separately reported.
1 Workload statistics represent a reporting rate of 93.2%. This figure includes vacant position months.
2 Includes both jury and non-jury trials.

*1987 Annual Report of the Director of the Administrative Office of the United States Courts.

B. Backgrounds of Magistrates

The vast majority of federal district and appellate judges are appointed to office while in their late 40's or 50's. As indicated in the table below, however, the number of full-time magistrates who are appointed during this stage of their legal career is not great.

Fiscal Year	F/T Magistrate Appointees	Appointees 41-years or younger	Appointees 42-55 years of age	Appointees 56 years or older
1980	19	11 (58%)	6 (32%)	2 (10%)
1981	12	8 (67%)	3 (25%)	1 (8%)
1982	22	13 (59%)	9 (41%)	0 (0%)
1983	14	7 (50%)	6 (43%)	1 (7%)
1984	30	17 (57%)	5 (17%)	8 (27%)
1985	21	15 (71%)	4 (19%)	2 (9%)
1986	38	27 (71%)	7 (18%)	4 (11%)
1987	17	16 (94%)	0 (0%)	1 (6%)

Full-time magistrates who are between 42 and 55 years of age at the time of appointment have consistently represented a minority of all new appointees to the office. In particular, during the last four years it has become more difficult for the judiciary to attract attorneys who are at this prime earning and experience level to the office. The frequency of appointees who are between 42 and 55 years of age has dropped below 20% during each of the last four years. Whether this decrease is temporary or evidence of a creeping decline in experienced candidates is not known at this time. The risk is serious, however, and should not be accepted. The potential of a general decline is particularly unfortunate in light of the excellent reputation built-up over the years by magistrates. Indicative of their record is the elevation of 23 former magistrates to federal judgeships.

Although the majority of the bar works in the private sector, most of the newly appointed magistrates have been drawn directly from the government and public sector ranks. The table below illustrates the differences in the professional backgrounds of newly appointed magistrates.

Year	Government/Public Sector	Private Practice
1981	6 (34%)	12 (66%)
1982	17 (65%)	9 (35%)
1983	10 (71%)	4 (29%)
1984	18 (56%)	14 (44%)
1985	12 (63%)	7 (37%)
1986	22 (58%)	16 (42%)
1987	13 (65%)	7 (35%)

Two of the purposes of the 1979 amendments to the Magistrates Act were to guarantee that all segments of the bar were given the opportunity to apply for the office and to ensure that only the best qualified candidates for the office were appointed. To this end, Congress required public notice of all vacancies in magistrate positions and careful screening of candidates in a citizen merit selection process. The disparity in income and the inadequate retirement benefits have effectively frustrated Congress' intent to reach and recruit highly qualified attorneys from a cross-section of the bar.

C. Current Retirement Coverage

Magistrates appointed prior to January 1, 1984, are covered under the civil service retirement system which applies to federal employees generally (chapter 83 of title 5, United States Code). Those provisions were recently amended to include magistrates along with bankruptcy judges in the group of employees who are entitled to an enhanced 2 1/2% annuity credit for each year of creditable service. (P.L. No. 100-53.) Although an improvement this plan still does not provide adequate benefits to magistrates who enter on duty at mid-career. As a result, many of these magistrates can not accumulate the number of years necessary to earn a suitable pension.

Most magistrates appointed after December 31, 1983, are covered mandatorily under the Federal Employees' Retirement System (FERS). Magistrates under FERS are entitled only to the general 1% annuity credit. Magistrates are also covered under social security and may participate in the Thrift Savings Plan. The inadequacy of this plan is demonstrated by the benefits earned by a magistrate who completes 16 years of service; they would include social security benefits, an annuity equal to only 16% of

final salary, and the return on the magistrate's and the Government matching contributions into the Thrift Savings Plan.

The Congress recognized the inadequacy of general government pension plans for other fixed term non-article III judicial officers. Judges serving in the territories and on the Tax Court are eligible for the full salary of the position upon retirement. The same considerations which supported such coverage for these officers apply to magistrates.

D. Recruitment and Retention

Recruitment of individuals who are in their peak years of legal experience has been particularly difficult in a competitive market where salaries for comparable services are so high. The disparity in salaries can be offset by attractive retirement benefits which would ameliorate to some extent the

financial sacrifice suffered by a substantial income reduction. The proposed "14-year" retirement plan would provide an effective recruitment tool for the office. The plan also contains features which provide incentives to remain in office. No enhanced benefit is paid until the magistrate is at least 65 years of age, and the maximum benefit is realized only when the magistrate remains in office until age 65 and completes 14 years of service. A magistrate who separates from office prior to age 65 after completing 14 years of service could suffer a considerable loss, since the annuity payable at age 65 years would be based on the salary of the position at the time he left office. Depending upon the length of the intervening time and the salary adjustments to the position, the final annuity could be significantly less than the annuity that would have been earned had the magistrate remained in service until 65.

Since the 1979 amendments to the Federal Magistrates Act, nearly 60 full-time magistrates have left office prior to attaining their retirement eligibility. This turnover is damaging not only to the courts involved but to the institution itself. Unless the economic hardships facing magistrates are alleviated, the turnover rate threatens to rise. Unfortunately but not surprisingly, the best qualified magistrates attract

the greatest attention in the marketplace. Saying no to the lucrative financial rewards offered to induce these top magistrates to leave office becomes extremely difficult, particularly in their mid-career stages when family needs are often most pressing.

CONCLUSION

The magistrates system has been carefully developed by the Congress to help meet the burgeoning caseload of the federal courts. The expanded responsibilities and the role of the office require top-level attorneys. Such attorneys, who are often faced with mid-career decisions such as law firm partnerships, are finding it extremely difficult to forego the opportunities of the private sector for the economic hardships associated with the office of United States magistrate. As the rewards for public service diminish while the financial benefits of the private sector increase, more and more well-qualified attorneys are spurning the opportunity to serve as a magistrate, to the detriment of the federal judiciary and ultimately the public good.

Unlike other top professionals and executives in the federal government who frequently leave office to parlay their short experience in government service into financial rewards, magistrates are asked to serve a minimum of eight years during their most productive years. These are also the same years during which many attorneys in law firms are achieving senior partner status, an opportunity many magistrates forfeit by assuming the office. Upgrading the retirement benefits of these judicial officers will go far in attracting and retaining the quality individuals the office of United States magistrate demands.

Senator Thurmond's Question

In your prepared remarks, you state that the present retirement system makes recruitment and retention of quality magistrates a serious problem. The Senate passed an Appropriations Bill this session that, if enacted, would in effect grant both bankruptcy judges and magistrates an immediate 11 percent pay raise and statutorily maintain their salary levels at 92 percent of district court judges pay. Judge Skopil, what impact will this salary increase have on the recruitment and retention of quality magistrates in the future if there is no change in the current retirement system for magistrates?

Judge Skopil's Response

RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

November 9, 1987

Honorable Howell T. Heflin
Chairman, Subcommittee on Courts
and Administrative Practice
223 Hart Building
Washington, D.C. 20510

Dear Mr. Chairman:

As requested at the recent hearings on S. 1630, I am enclosing an estimate which compares the costs of the current government pension plans and the "14-year" retirement legislation for magistrates and bankruptcy judges. It is based on the actual and anticipated government service of each incumbent magistrate and bankruptcy judge. These estimates complete the preliminary figures presented in the prepared statement of Judge Morey L. Sear which were intended to represent the gross amount of annuities payable under the "14-year" retirement plan and were not offset by the existing retirement liability.

The eventual added expense of the legislation may be lower than estimated, since several of the assumptions relied upon in projecting the future costs are very conservative. The specific assumptions are enumerated and explained in the enclosed materials.

One potentially important cost factor, however, cannot be measured definitively and is not reflected in the estimates. Major savings can be expected as a result of the bill's incentives for sitting judicial officers

to remain on the bench. The issue of lost efficiency and its impact on the judiciary are described by a noted authority as follows:

> What is not fully appreciated is that . . . resignations have additional adverse repercussions affecting the judiciary. Vacancies take time to fill and place an added burden on the remaining judges. Furthermore, it is commonly accepted that it takes three to six years before a new judge reaches peak performance. Finally, if the preferred choices for replacement of resigned judges reject appointment because of financial considerations, some compromise of quality is inevitable. (Statement of Talbot D'Alemberte, Dean of the Florida State University College of Law and President of the American Judicature Society before the Commission on Executive, Legislative and Judicial Salaries on April 3, 1985, reprinted in 69, No. 1 Judicature 5 (June-July 1985).)

"Closing the revolving door" will have a modest immediate effect and a significant long-term impact upon cost-savings. It is clear that a reduction in turnover rate will reduce inefficiency caused by vacancies, and the time it takes to bring a new judge up to full performance. Increased efficiency clearly can be expected to enable the courts to absorb some increases in caseload without the addition of costly new bankruptcy judge and magistrate positions. Each existing bankruptcy judge or magistrate position costs approximately $280,000 in recurring annual costs.

We would be happy to provide any additional information you may require regarding this important legislation.

Sincerely,

L. Ralph Mecham
Director

Enclosure

cc: Honorable Otto R. Skopil, Jr.
Honorable Morey L. Sear

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Cost Analysis of S. 1630 and H.R. 2586

The attached tables represent an estimate of the costs incurred under the "14-year" retirement plan, offset by the Government's existing liability under the present pension systems. The costs were determined by computing the difference between the annuities payable for each officer under the "14-year" retirement plan reduced by the annuities payable under the present pension system. In addition, the revenue from the mandatory contributions into the existing pension plan, which would not be required under the "14-year" retirement plan, has been factored in as an additional cost of the proposed legislation.

The costs under both plans are expressed in 1987 dollars based on the present salary of $72,500 per annum, although an alternative cost estimate is included based on a salary of $82,340 per annum, or 92% of the salary of a district judge. In addition, the costs discount the benefits and contributions arising from social security coverage, since each magistrate and bankruptcy judge is subject to social security under both the current pension plan and the proposed "14-year" retirement plan.

In projecting the government outlays under each pension plan several major assumptions were made which may have the effect of overstating the eventual added cost of the proposed legislation. These include:

(1) Each sitting magistrate and bankruptcy judge is assumed to survive until his or her 80th birthday. (Many of these officials, of course, will not reach this age, with some expiring prior to attaining the minimum eligible retirement age. As a result, the Government's liability will be diminished.)

(2) Each officer is assumed to stay on the bench until attaining the minimum eligible retirement age of 60 or 62 years under the present pension system or 65 years of age under the proposed plan. (Some of the officers will be eligible to retire under the present pension plan as early as 50 years of age, while others will remain in office well after reaching their minimum eligible retirement age in either an active or recalled status.)

(3) Each officer is assumed to elect to participate in the "14-year" retirement plan. (Some officers may opt to remain under the current pension plan since they have earned substantial credit toward an annuity with significant survivorship benefits, or they may desire to claim benefits at an earlier age.)

(4) Each officer, other than those covered mandatorily under the Federal Employees Retirement System, is assumed to be covered under the "Modified or Offset" civil service retirement system. (Some of these officers will remain under the "dual CSRS and social security" plan which will increase the amounts of annuities payable and the contributions under the present pension plan.)

Magistrates and bankruptcy judges may be entitled to a full or partial refund of their prior contributions to CSRS or FERS at the time they opt into the "14-year" retirement plan. They are not entitled to any refund, however, for any period of service credited under CSRS or FERS. The refund total is estimated at $8,234,772 under the proposed retirement system. (The refund estimate does not include contributions made prior to becoming an employee of the judicial branch.) It is impossible to determine or project when an individual magistrate or bankruptcy judge will opt into the "14-year" plan and thereby be entitled to a refund. Many of the officers may wait until they are fully vested under this plan before electing into it. Spreading this cost over a 14-year period would result in an annual outlay of $588,198 for the payment of refunds.

An estimate of the additional costs, if any, incurred under the provisions for optional coverage under the Judicial Survivors Annuity System (JSAS) is not set forth, primarily for two reasons:

First, over 90% of the survivorship benefit provided under JSAS is offset by the survivorship benefits under the existing CSRS government pension plan in most cases. The less than 10% additional cost may be further discounted substantially due to the expected greater number of judicial officers who would participate in the present CSRS survivorship plan rather than under JSAS, thereby increasing the cost to the Government under the present pension plans. (Under JSAS, the judicial officer must contribute 5% of his or her entire salary which accounts for the relatively small proportion of eligible article III judges who elect such coverage.); and

Second, any estimate would involve a series of very speculative projections, including: (1) the number of magistrates and bankruptcy judges electing JSAS coverage; (2) the amount of payments each judicial officer would make in order to be eligible for an unreduced credit under JSAS for prior government service; (3) the number of years each spouse (current and future) is estimated to outlive the annuitant; (4) the number and ages of any present and future dependents; and (5) the frequency of remarriages.

COST COMPARISON: CURRENT SYSTEM (CSRS/FERS) versus PROPOSED SYSTEM (14-YEAR LEGISLATION)

	CURRENT SYSTEM							PROPOSED SYSTEM		NET EFFECT
Fiscal Year	# of Annuitants	Total Annuities	Soc. Sec. Offset	Net Annuities	Gov't Thrift Contribution	Employee Contribution	Net Outlays	# of Annuitants	Net Outlays	Increased Outlays
1988	114	3,564,607	57,684	3,506,923	472,700	(1,293,163)	2,686,460	60	3,446,359	759,899
1989	123	3,783,886	82,041	3,701,845	432,100	(949,668)	3,184,277	69	4,091,703	907,426
1990	142	4,390,145	120,558	4,269,587	429,200	(922,301)	3,776,486	74	4,447,538	671,052
1991	160	4,814,410	168,000	4,646,410	423,400	(864,266)	4,205,544	81	4,990,959	785,415
1992	175	5,337,683	214,725	5,122,958	408,900	(816,614)	4,715,244	97	5,872,858	1,157,614
1993	192	5,755,472	290,496	5,464,976	403,100	(771,790)	5,096,286	119	7,077,747	1,981,461
1994	202	6,103,179	358,550	5,744,629	388,600	(727,442)	5,405,787	134	7,979,721	2,573,934
1995	213	6,495,579	437,928	6,057,651	374,100	(706,214)	5,725,537	151	9,027,441	3,301,904
1996	223	6,825,166	525,611	6,299,555	371,200	(672,241)	5,998,514	166	10,051,793	4,053,279
1997	230	7,064,682	616,170	6,448,512	368,300	(641,572)	6,175,240	179	11,136,963	4,961,723
1998	231	7,073,870	697,620	6,376,350	353,800	(630,253)	6,099,897	187	11,716,593	5,616,696
1999	247	7,226,182	835,107	6,391,075	348,000	(631,671)	6,107,404	192	12,278,724	6,171,320
2000	254	7,811,818	955,802	6,856,016	342,200	(583,544)	6,614,672	204	13,094,079	6,479,407
2001	258	8,114,401	1,074,312	7,040,089	324,800	(574,586)	6,790,303	207	13,410,146	6,619,843
2002	263	8,433,290	1,184,026	7,249,264	321,900	(563,735)	7,007,429	201	13,218,582	6,211,153
2003	259	8,530,012	1,251,747	7,278,265	310,300	(556,662)	7,031,903	192	12,947,909	5,916,006
2004	278	9,327,857	1,438,094	7,889,763	304,500	(574,595)	7,619,668	196	13,232,471	5,612,803
2005	286	9,701,346	1,579,578	8,121,768	284,200	(528,361)	7,877,607	209	13,913,594	6,035,987
2006	306	10,613,896	1,799,892	8,814,004	269,700	(513,740)	8,569,964	213	14,496,264	5,926,300
2007	317	11,055,169	1,981,250	9,073,919	255,200	(459,482)	8,869,637	223	15,177,526	6,307,889
OUTLAYS							119,557,859		201,608,970	82,051,111

COST COMPARISON: CURRENT SYSTEM (CSRS/FERS) versus PROPOSED SYSTEM (14-YEAR LEGISLATION)

	CURRENT SYSTEM							PROPOSED SYSTEM		NET EFFECT
Fiscal Year	# of Annuitants	Total Annuities	Soc. Sec. Offset	Net Annuities	Gov't Thrift Contribution	Employee Contribution	Net Outlays	# of Annuitants	Net Outlays	Increased Outlays
1988	114	3,564,607	57,684	3,506,923	472,700	(1,293,163)	2,686,460	60	3,446,359	759,899
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1995	213	6,495,578	437,928	6,057,651	374,100	(706,214)	5,725,537	151	9,027,441	3,301,904
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2005	286	9,701,346	1,579,578	8,121,768	284,200	(528,361)	7,877,607	209	13,913,594	6,035,987
2006	306	10,613,896	1,799,892	8,814,004	269,700	(513,740)	8,569,964	213	14,496,264	5,926,300
2007	317	11,055,169	1,981,250	9,073,919	255,200	(459,482)	8,869,637	223	15,177,526	6,307,889
OUTLAYS							19,557,856		201,608,970	82,051,111

INCREASED GOVERNMENT OUTLAYS FOR 14-YEAR RETIREMENT PROGRAM

Fiscal Year	AT $82,340 SALARY			AT $72,500 SALARY		
	Current System	Proposed System	Difference	Current System	Proposed System	Difference
1988	3,051,013	3,914,030	863,017	2,686,460	3,446,359	759,899
1989	3,616,383	4,646,947	1,030,564	3,184,277	4,091,703	907,426
1990	4,288,955	5,051,069	762,114	3,776,486	4,447,538	671,052
1991	4,776,236	5,668,232	891,996	4,205,544	4,990,959	785,415
1992	5,355,103	6,669,805	1,314,702	4,715,244	5,872,858	1,157,614
1993	5,787,852	8,038,197	2,250,345	5,096,286	7,077,747	1,981,461
1994	6,139,352	9,062,569	2,923,217	5,405,787	7,979,721	2,573,934
1995	6,502,492	10.252,465	3,749,972	5,725,537	9,027,441	3,301,904
1996	6,812,512	11,415,821	4,603,309	5,998,514	10,051,793	4,053,279
1997	7,013,220	12,648,249	5,635,029	6,175,240	11,136,963	4,961,723
1998	6,927,653	13,306,535	6,378,882	6,099,897	11,716,593	5,616,696
1999	6,936,179	13,944,947	7,008,768	6,107,404	12,278,724	6,171,320
2000	7,512,283	14,870,946	7,358,863	6,614,672	13,094,079	6,479,407
2001	7,711,747	15,229,903	7,518,156	6,790,303	13,410,146	6,619,843
2002	7,958,337	15,012,344	7,054,006	7,007,429	13,218,582	6,211,153
2003	7,986,132	14,704,940	6,718,808	7,031,903	12,947,909	5,916,006
2004	8,653,657	15,028,117	6,374,460	7,619,668	13,232,471	5,612,803
2005	8,946,598	15,801,668	6,855,070	7,877,607	13,913,594	6,035,987
2006	9,732,908	16,463,407	6,730,499	8,569,964	14,496,264	5,926,300
2007	10,073,247	17,237,116	7,163,870	8,869,637	15,177,526	6,307,889
Increased Government Outlays Over 20 Years			93,185,447			82,051,111

INCREASED GOVERNMENT OUTLAYS FOR 14-YEAR RETIREMENT PROGRAM

Fiscal Year	AT $82,340 SALARY			AT $72,500 SALARY		
	Current System	Proposed System	Difference	Current System	Proposed System	Difference
1988	3,051,013	3,914,030	863,017	2,686,460	3,446,359	759,899
1989	3,616,383	4,646,947	1,030,564	3,184,277	4,091,703	907,426
1990	4,268,955	5,051,069	782,114	3,776,486	4,447,538	671,052
1991	4,776,236	5,668,232	891,996	4,205,544	4,990,959	785,415
1992	5,355,103	6,669,805	1,314,702	4,715,244	5,872,858	1,157,614
1993	5,787,852	8,038,197	2,250,345	5,096,266	7,077,747	1,981,461
1994	6,139,352	9,062,569	2,923,217	5,405,787	7,979,721	2,573,934
1995	6,502,492	10,252,465	3,749,972	5,725,537	9,027,441	3,301,904
1996	6,812,512	11,415,821	4,603,309	5,998,514	10,051,793	4,053,279
1997	7,013,220	12,648,249	5,635,029	6,175,240	11,136,963	4,961,723
1998	6,927,653	13,306,535	6,378,882	6,099,897	11,716,593	5,616,696
1999	6.936,179	13,944,947	7,008,768	6,107,404	12,278,724	6,171,320
2000	7,512,283	14,870,946	7,358,663	6,614,672	13,094,079	6,479,407
2001	7,711,747	15,229,903	7,518,156	6,790,303	13,410,146	6,619,843
2002	7,958,337	15,012,344	7,054,006	7,007,429	13,218,582	6,211,153
2003	7,986,132	14,704,940	6,718,808	7,031,903	12,947,909	5,916,006
2004	8,653,657	15,028,117	6,374,460	7,619,668	13,232,471	5,612,803
2005	8,946,598	15,801,669	6,855,070	7,877,607	13,913,594	6,035,987
2006	9,732,908	16,463,407	6,730,499	8,569,964	14,496,264	5,926,300
2007	10,073,247	17,237,116	7,163,870	8,869,637	15,177,526	6,307,889
Increased Government Outlays Over 20 Years			93,185,447			82,051,111

Senator HEFLIN. Thank you, sir. We will go through the panel, and then ask questions. Next, Judge Sear, I would appreciate it if you would summarize your statement; your entire statement will be submitted for the record.

STATEMENT OF JUDGE MOREY L. SEAR

Judge SEAR. Thank you, Mr. Chairman. I accept your admonition, "When you stand well, stand pat." It is the same advice that I try to give lawyers on motion day, and I shall adhere to that.

I do want to point out to you that the volume of cases in bankruptcy has grown substantially over the last years—between 1979 and today—from 226,000 to 561,000 cases. And while only a short time ago very few lawyers practiced in bankruptcy, today many, many more lawyers are engaged in that practice. Indeed, the larger law firms in the United States have established bankruptcy departments within their law firms.

The bankruptcy courts have actually served as a training ground for these law firms, and instead of our being able to attract experienced lawyers to the bankruptcy bench, it is the lawyers that are attracting experienced bankruptcy judges to the private practice.

So I think it is really necessary that we provide a salary base and a retirement system that will enable us to maintain and retain experienced bankruptcy judges in the system. Judge Merhige alluded to the success of one of his law clerks in going on to private practice here in the district. Each of us, I am sure, has had a similar experience, and I am certain that you and members of your staffs have experienced similar things.

The only incentive we have, really, to entice lawyers to become bankruptcy judges is the challenge of the work and the benefit of financial security after a career of service on the bench. The Bankruptcy Reform Act of 1978 established 232 bankruptcy judge positions. We added 52 in 1986; they are presently being filled. But since the act became effective only 8 years ago, 140 bankruptcy judges have left the bench—88 have retired, but 52 have resigned prior to reaching the eligibility for retirement age. The level of turnover is just something that we can't cope with it.

We appear today, Mr. Chairman and members of the committee, with the article III establishment, the bankruptcy judges, and the U.S. magistrates standing firmly together in proposing and supporting the legislation that you have before you.

With some modifications, bankruptcy judges and magistrates are covered by the same retirement system as Federal employees generally. When the Congress passed the Bankruptcy Reform Act of 1978, it recognized that special retirement was necessary for bankruptcy judges. There was, however, no agreement between the House and the Senate on the specifics of the retirement package.

It was intended that a comprehensive retirement plan would be created for all bankruptcy judges before the end of the transition created by the Reform Act, but that hasn't yet happened. As Judge Skopil has pointed out, judicial officers are somewhat different in their tenure than ordinary civil servants; therefore, this retirement package, this retirement bill, supplies and supplements something very much needed.

I think that this retirement act will have the effect of encouraging judges to stay in the court system for a full 14-year term. Because benefits don't vest until after 8 years of service, judges are more likely to stay through at least one 14-year term and thereby earn a full annuity.

This is true because the average age of newly appointed bankruptcy judges is 45, and the average judge would be 59 years of age when the right to a full-salary pension vests. However, the pension is not payable until the judge reaches age 65; therefore, judges are more likely to remain in service at least until they reach the age that entitles them to full benefits.

I have attached to my prepared statement some cost estimates that we have prepared. These are rough estimates, Mr. Chairman. We are presently working on a more accurate statement of costs, and I would ask leave of the committee to substitute that updated and more accurate statement of costs within the next 7 days.

I would be happy, also, to answer whatever questions the committee might have.

Senator HEFLIN. Thank you. Would you file that, and do it as expeditiously as you can? It will become a part of the record without objection.

Judge SEAR. Thank you.

[The statement of Judge Sear follows:]

PREPARED STATEMENT OF

JUDGE MOREY L. SEAR

CHAIRMAN

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OF THE

JUDICIAL CONFERENCE OF THE UNITED STATES

Mr. Chairman, thank you for the opportunity to appear before your subcommittee today. My name is Morey L. Sear and I am a judge of the United States District Court for the Eastern District of Louisiana. I also serve as Chairman of the Judicial Conference Committee on the Administration of the Bankruptcy System.

Before becoming Chairman of the Bankruptcy Committee, I served as Chairman of the Advisory Committee on Bankruptcy Rules.

Prior to being appointed to the district court bench I am proud to say that I served five years as a United States magistrate. After having been appointed a district judge, I was privileged to serve as a member of the Judicial Conference Committee on the Administration of the Magistrates System chaired by Judge Otto Skopil.

I appear with Judge Skopil and Judge Robert Merhige of the Eastern District of Virginia on behalf of the Judicial Conference, which has unanimously endorsed the legislation to provide United States magistrates and bankruptcy judges with the same retirement benefits currently available to territorial judges which you are now considering.

As I am certain you know, Judge Merhige is presently presiding over the A.H. Robins bankruptcy reorganization. In addition, for the past twelve years Judge Merhige has been a member of the Bankruptcy Committee.

Let me first tell you why I believe S. 1630 is so important to the management of the federal judicial system. I will limit my remarks to the bankruptcy system. Judge Skopil will present his views from the vantage point of chairman of the Magistrates Committee.

The success of the bankruptcy system depends on our ability to attract and retain qualified lawyers to serve as bankruptcy judges. Without retirement legislation such as that proposed in S. 1630, I fear our success in drawing experienced bankruptcy practitioners to the bench and keeping them there will be greatly diminished. I recognize that federal judicial salaries may never be comparable to the salaries paid the better lawyers appearing before the court. Nevertheless, we can go a long way in attracting and keeping experienced and capable lawyers by offering them stimulating and challenging work with the promise of reasonable financial security upon reaching retirement age.

Background of the Bankruptcy System

Let me give you a little background on the bankruptcy courts as they exist today and the judges who serve them. In 1978, following ten years of vigorous debate and study, Congress revised the bankruptcy laws and established an upgraded bankruptcy court system. The enabling legislation, known as the Bankruptcy Reform Act of 1978, was the first major overhaul of both the procedural and substantive aspects of the bankruptcy system in 40 years.

The bankruptcy system was further revised by Congress in 1984. The 1984 legislation vested all jurisdiction over bankruptcy cases and proceedings in the United States district courts and established the bankruptcy courts as units of the district courts. Bankruptcy judges are judicial officers of the district courts, and they handle virtually all bankruptcy litigation in the first instance.

Bankruptcy judges preside with broad authority over a caseload significant in volume and commercial impact. Since the passage of the Bankruptcy Reform Act of 1978, the number of bankruptcy petitions filed each year has increased and the number has grown from 226,471 in 1979 to 561,278 in 1987. The Administrative Office of the U.S. Courts projects further filing increases to 775,000 petitions by 1989.

Only a short time ago bankruptcy was a practice limited to a few lawyers. Today the practice of bankruptcy law attracts many more lawyers and our country's largest law firms have established bankruptcy departments. Business reorganizations involving hundreds and often thousands of creditors have created a demand

for qualified bankruptcy lawyers. This demand is being met at the court's expense by enticing experienced bankruptcy judges to leave the bench for the more lucrative private practice.

The caseload, of course, includes many routine consumer cases which require minimal judicial involvement. Yet, 16% of the total filings consist of business cases, both reorganizations and liquidations. During the 1987 reporting year, for example, there were more than 22,500 chapter 11 business reorganization cases filed. As a result of the enactment of special bankruptcy relief provisions for family farmers in 1986 more than 5,000 petitions have been filed under the new chapter 12 created by that legislation.

Recruitment of Bankruptcy Judges

The current annual salary of a bankruptcy judge is $72,500. Recently a 25 year old second year law clerk to a bankruptcy judge left his position with the judge to enter private practice at a salary of $91,000.1/ An executive placement service, I am told, has recruited bankruptcy judges for positions at salaries in excess of $250,000.

The only incentive to entice lawyers to become bankruptcy judges is the challenge of the work and the benefit of financial security after a career of service on the bench.

Representatives of the National Conference of Bankruptcy Judges will testify before you today. They, I am sure, will tell you why judges have left the bench prematurely.

The Bankruptcy Reform Act of 1978 established 232 bankruptcy judge positions. The 1986 amendments added 52 more judgeships, which are in the process of being filled. Since the Act became effective eight years ago, 140 bankruptcy judges have left the bench. Of this number 88 retired and 52 resigned from office before retirement eligibility age. This level of turnover by resignation and early retirement can be greatly reduced and these

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1/ The New York Law Journal reported on October 13, 1987 that the starting pay for new associates in four large New York firms is to be raised to $71,000. When bonuses are added, recent graduates will be making more money in their first jobs than bankruptcy judges.

experienced judges retained to strengthen the bankruptcy court system. Significantly, I understand that the association of former bankruptcy judges now has more members than the conference of active bankruptcy judges.

Present Retirement System

With some modifications, bankruptcy judges and magistrates are covered by the same retirement systems as federal employees generally. They presently fall under four categories for retirement purposes. (1) A judge may be in the "dual" system, which includes both social security and civil service pension participation. This system requires contributions of approximately 11% of gross salary; (2) A judge may be under modified civil service retirement, which requires an 8% contribution and will have a social security offset at retirement; (3) A judge may be under FERS, which provides a combination of social security, annuity and thrift plan, the cost of which will vary, and (4) A judge may participate only in social security.

When Congress enacted the Bankruptcy Reform Act of 1978 it recognized that special retirement was necessary for bankruptcy judges. There was, however, no agreement between the House and Senate on the specifics of a retirement package. Instead, the legislation granted bankruptcy judges serving during the transition period created by the Act (October 1, 1979 - June 28, 1984) an enhanced civil service annuity credit of 2-1/2 percent for certain service.

It was intended that a comprehensive retirement plan would be created for all bankruptcy judges before the end of the transition. That, however, has not yet happened. In 1984, as part of the bankruptcy amendments enacted that year, the enhanced rate of credit (2-1/2%) was extended to all bankruptcy judge and referee service, but only for certain bankruptcy judges.

These same civil service retirement enhancements were extended by statute to United States magistrates in 1986, consistent with the policy of the Judicial Conference that bankruptcy judges and magistrates receive the same compensation and benefits.2/ The enhanced credit, however, applies only to certain bankruptcy

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2/ Pub.L. 100-53 (1987)

judges and magistrates. Bankruptcy judges and magistrates appointed after January 1, 1984 are covered only by the Federal Employee Retirement System (FERS), and they receive the same benefits applicable to career civil servants generally.

Employees under FERS receive social security benefits and a modest annuity, with an opportunity to participate in a thrift savings program. It appears that a bankruptcy judge or magistrate who is covered by FERS cannot contribute enough to the thrift program to achieve the same level of benefits accruing to a bankruptcy judge or magistrate participating in the modified civil service retirement program.

The Proposed Retirement System

Judicial officers are fundamentally different from career civil servants. Retirement benefits under the civil service retirement systems are geared to career employees who serve for thirty or more years. Bankruptcy judges usually enter judicial service after many years in the private sector and accordingly accumulate less federal service than career civil servants. For example, the average age of newly appointed article III judges is 50. They may retire on full salary or take senior service with full salary at age 65 after serving on the bench for fifteen years.

Because the average period of service of judicial officers is substantially less than that of career civil servants, the annuities of bankruptcy judges and magistrates are insufficient to provide reasonable financial protection by the time they reach retirement age.

The full-salary retirement after 14 years of service proposed by this legislation is fair and necessary. It provides that for each year of service subsequent to October 1, 1979, the date the Bankruptcy Reform Act became effective, retired bankruptcy judges and magistrates will receive an annuity at the rate of 1/14 of the salary earned at the time of retirement. The annuity would be adjusted for cost of living increases. A minimum period of eight years of service is necessary in order for the benefits to vest. Bankruptcy judges and magistrates would be eligible for disability after completing five years of service.

Under the proposed legislation, bankruptcy judges and magistrates may subscribe for and contribute to survivor benefits

under the judicial survivor and annuity plan. They may also elect to remain covered by their current civil service retirement plan and not participate in the new program.

Retirement Age

The proposed legislation will have the effect of encouraging judges to stay in the court system for longer periods of time. Because benefits do not vest for 8 years, judges are more likely to stay through at lest one 14 year term and thereby earn a full annuity. This is true because the average age of newly appointed bankruptcy judges is 45 and the average judge will be 59 when the right to a full salary pension vests. However, the pension is not payable until a judge reaches age 65. Therefore judges are more likely to remain in service at least until they reach the age that entitles them to full benefits.

Moreover, the pool of retired judges who are willing to be recalled to active service at a time of need will grow substantially and reduce the need for and expense of the creation of new judgeships to provide for extraordinary times or crises that may be only temporary in nature.

The concept of providing a better retirement system for fixed term judicial officers was first endorsed by the Judicial Conference in 1982. It enjoys enthusiastic support throughout the federal judiciary. The Judicial Conference fully supports this legislation. I am pleased to see so many members of the Congress join to co-sponsor this legislation.

Funding the Retirement System

This legislation will have virtually no impact on the federal budget until 1993. Thereafter, the financial impact will be modest. While the figures I have provided to you are for bankruptcy judges only, the result for United States magistrates should be similar.

Because only service after October 1, 1979 may be counted toward annuity under this plan, only judges who will be 65 years of age and will have served 14 years subsequent to October 1979 will be eligible for a full annuity. Judges who elect to retire prior to meeting the new criteria would receive a partial

annuity. Accordingly, while judges who have been in the system since 1979 are now eligible to receive reduced annuities, no judge presently on duty would be eligible for a full annuity until 1993.

In 1993 only 48 bankruptcy judges will have met both the age and service requirements of the bill. After projecting salary increases to 1993 and assuming all choose to retire at that time, the maximum cost to the government will be approximately $3.8 million. Of course, we must add to that cost any refunds due these individuals for contributions made by them to the civil service retirement system.

On the other hand, the effect of this legislation creates a substantial offset savings. Because retired judges will already be receiving the full salary of an active judge, recall to active service of retired judges will not require any additional salary expense. Like senior district and circuit judges, bankruptcy judges will be available to work without further compensation.

To the extent these retired bankruptcy judges continue to serve in a recalled capacity, there will clearly be a reduced need to seek additional judges in districts faced with short term or temporary need.

The attached chart projects the cost of the proposed legislation for bankruptcy judges through the year 2000. These estimates are made on the basis of moderate salary increases and assume retirement for judges as soon as they become eligible to receive full benefits. They do not, however, include the cost of refunds or offset savings for recall. The cost in the year 2000 is projected to be approximately $9.4 million, less these offsets.

At the present time the budget for the federal judiciary is $1.436 billion for fiscal year 1988. Based on that amount, if we were to incur liability under the new retirement plan in 1988 rather than 1993, it would be only .0026 percent of our total budget. We believe the benefits to the judiciary far exceed that cost and recommend that the legislation be adopted.

Conclusion

I have avoided extensive references to the legislative

history and statutory underpinnings of enhanced retirement for bankruptcy judges. I would be remiss, however, in failing to recall the pledge made by some members of Congress eloquently stated by Congressman Edwards of California during final debate on H.R. 8200, the Bankruptcy Reform Act of 1978. At that time, Mr. Edwards said:

> "[A] further change made by the Senate is to substantially reduce the retirement benefits for the present bankruptcy judges. It also eliminates any retirement plan for the judges to be appointed in 1984 and thereafter. The present bankruptcy judges, through their representatives, who have worked so hard and so long for bankruptcy reform are troubled by this development. However, in a selfless spirit based more on their commitment to reform than on personal gain, they lent their full support to the legislation.
>
> I now renew my personal commitment to attempt to establish a rational and fair retirement for these dedicated public servants."3/

I urge Congress to complete the task it set out for itself nine years ago and to create a fair and reasonable retirement system to help attract and retain competent bankruptcy judges and magistrates. I would be pleased to answer any questions you may have.

Thank you for the opportunity to appear on this very important piece of legislation.

Attachment.

3/ 124 Cong. Rec. H11866 (daily ed. October 6, 1978) (Statement of Congressman Edwards).

ATTACHMENT

ANNUALIZED COST FOR FULL SALARY RETIREMENT PROVISIONS OF S. 1630*

Year	No. of Bankruptcy Judges Eligible to Retire	Estimated Salary	Estimated Cost if All Retired
1993	48	$79,274	$3,805,182
1994	56	$80,464	$4,448,893
1995	62	$81,690	$5,020,588
1996	67	$82,896	$5,517,962
1997	74	$84,139	$5,191,076
1998	80	$85,401	$6,874,286
1999	95	$86,682	$8,261,203
2000	107	$87,982	$9,404,977

* EXCLUSIVE OF RETURNED CONTRIBUTIONS AND OFFSET SAVINGS

Senator HEFLIN. Judge Kelley, we are glad to see you back with us. You have been before us several times.

STATEMENT OF JUDGE RALPH H. KELLEY

Judge KELLEY. Mr. Chairman, thank you for letting me be here. I remember the day we were working so hard trying to get a few new judges, and Senator Grassley presided part of the time—Senator Thurmond here working hard. And half of those new ones are aboard now, and I must say, with the number of pending cases we have, we need them and we appreciate your interest in our system.

The president of the National Conference of Bankruptcy Judges is sitting back here, William Anderson. He just took office last Friday, and he is a little bit bashful, and he asked me, as an old-timer who, if the Lord lets me live until next year, will have been in the bankruptcy court 20 years, to come in and just very briefly supplement my statement with you.

You know, nobody has twisted my arm and made me be here, whatever the salary and the retirement benefits. I enjoy being a bankruptcy judge and I get a great deal of satisfaction out of it.

This past Monday was a particularly hard day on the bench. I had a chapter 12—you know, that is a new creation for the farmer. And as this man sat there and looked at me and said, "My daddy farmed this land; my granddaddy farmed it, and I want a chance to offer a plan to keep us out here on the farm," that goes along with about 40 other chapter 12's that we have out in the country. We hold court out in middle Tennessee as well as Chattanooga.

Now, the fact that I have been on the bench 20 years and I have seen a bunch of row-crop farmers, and a man that might have a little granary attached to his place or dairy farms—I think the fact that I have handled a number of these cases gives me a little better feel for what it takes to get the job done, and to see a successful, confirmed chapter 12 is a good feeling. So that is some of the satisfaction that you get of being on the bench.

Now, there are a lot of poor folks down my way who want to pay their bills and they don't want to bankrupt. And the majority will take this little chapter 13. But you know, little chapter 13 is pending for 4,200 people down my way in southeast Tennessee, there at Chattanooga, and each month the creditors, instead of being bankrupted on, are getting a check from the trustee, and the total amount after attorneys' fees and commissions of about a million dollars by people who are keeping their houses and keeping their cars and making a go of it and struggling to pay their bills.

We have now pending in the bankruptcy court so many cases you couldn't believe it—804,000. Now, many of them will just be a simple case, and you won't have an adversary proceeding or a motion or a contested matter, but in many of them you do. And if you just put an average of three, that is 2,400,000 hearings we are going to have in the near future and put down some kind of order to let somebody get their property back that they are trying to reclaim, or to confirm a plan, or to hear an objection on a creditor's claim.

We have lots of work, and we appreciate the fact that a few more judges are coming aboard. I supplemented my statement by show-

ing you that since 1980—I listed every judge who has left the bench, some by retirement and resignation, but about 77 percent have been invited to practice law. And to show you where they are, I attached a list of the former Judges' Association, and just look at some of those prestigious law firms that they have gone with—139 of them—who find more satisfaction practicing law and making money.

There are other statistics here. These two judges have covered it well. Let me just tell you that it is a good feeling to come down here to your committee and know that you have Senators who are interested in the problems of the people out in the community.

These are rather calamitous times, and I don't know what the future holds, but I think we are going to have more business instead of less. And I hope the judges that we keep on the bench will have enough sense and enough experience to deal with those problems, and maybe if they are down there resolving their disputes in the bankruptcy courts, they won't have to be here on your doorstep.

As far as I know, every circuit judge, every district judge—the other day we met with the Chief Justice, and I have on page 4 of my statement his comments about the judicial family—supports the improvements in this bill. I am sure it is not a perfect bill, but we endorse it, and I will be happy to answer any questions. And we just thank you for the time of letting us come here and present our view.

[Submissions for the record follow:]

PREPARED STATEMENT

OF

HONORABLE RALPH H. KELLEY
CHIEF UNITED STATES BANKRUPTCY JUDGE
FOR THE
EASTERN DISTRICT OF TENNESSEE

Summary of Prepared Statement
In Support of Retirement Legislation
for Bankruptcy Judges and Magistrates

In the early 1970's Congress appointed the Commission on Bankruptcy Laws of the United States. It made its report in 1973 and recommended an entirely new bankruptcy system. The 95th Congress responded by passing the Bankruptcy Reform Act of 1978.

It was the original intention of Congress to include retirement provisions in the Bankruptcy Reform Act of 1978. In order to speed up the legislation and insure its passage, bankruptcy judges agreed for retirement provisions to be stricken so that a new reform act could become law.

Bankruptcy judges were promised a retirement system at an early date and we are presently appearing in support of the retirement system unanimously recommended by the Judicial Conference of the United States.

When Congress passed the Federal Employees' Retirement System for government employees (FERS), it made no provision for bankruptcy judges or magistrates. Any bankruptcy judge or magistrate appointed after December 30, 1983, is under the FERS system. These judges receive no benefits under the civil service retirement program.

The ideal candidate for judge would be too old to serve sufficient years to obtain a meaningful retirement under the general government retirement system.

Even under civil service retirement with a cap of 80%, between 1980 and 1987, 70% of the bankruptcy judges found salary and retirement benefits insufficient to keep them on the bench. They are now engaged in the private practice of law.

We are grateful that Congress is moving to improve benefits available to bankruptcy judges and magistrates. The legislation before you is absolutely necessary to recruit and retain high quality lawyers to serve in the specialized position of bankruptcy judge.

* * *

On April 8, 1987, Mr. L. Ralph Mecham, Director of the Administrative Office of the United States Courts, acting in his capacity as Secretary to the Judicial Conference of the United States, formally transmitted to Congress the unanimous recommendation of the Judicial Conference that bankruptcy judges and magistrates be included in the judicial retirement system now applicable to territorial judges under 28 U.S.C. §373.

A bill to effect the Conference's recommendations was introduced and co-signed by Chairman Heflin, and Senators Grassley and DeConcini.

In his letter of transmittal Mr. Mecham pointed out that United States Bankruptcy Judges and Magistrates serve as judicial officers of the United States District Courts. Bankruptcy judges are appointed by United States Circuit Judges and Magistrates are appointed by United States District Judges.

In recent years Congress has expanded the powers of Magistrates and Bankruptcy Judges. As a bankruptcy judge my testimony will be primarily concerned with the bankruptcy court system.

In the early 1970's Congress appointed the Commission on Bankruptcy Laws of the United States. It made its report in 1973 and recommended an entirely new bankruptcy system. The 95th Congress responded by passing the Bankruptcy Reform Act of 1978. After its jurisdictional provisions were declared unconstitutional, Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984.

Today the bankruptcy courts of the United States constitute a specialized court system. Its judges have to be specialists in bankruptcy law (Title 11 of the United States Code), as well as have expertise in other areas of the law. There is no dollar limit on the jurisdiction of the court.

With an annual caseload of 561,278 as of June 30, 1987, the bankruptcy court system works remarkably well. It does so only because bankruptcy judges are specialists. They handle only bankruptcy cases. A generalist court would be unable to handle this volume of work. That is why every district court in the United States has a standing order to refer all bankruptcy cases to the bankruptcy judges.

Bankruptcy judges appoint clerks and retain responsibility for their supervision. There are more than 4,000 employees in the court system which is comprised of clerks, law clerks, deputy clerks, secretaries, courtroom deputies, and other people under the supervision of bankruptcy judges.

The Budget Committee of the Judicial Conference for Fiscal Year 1988 has requested 4,116 staff positions for the district courts, and 4,067 for bankruptcy courts. There are 575 district judges and 284 bankruptcy judges. Each bankruptcy judge has approximately double the supervisory responsibility of a district judge.

It was the original intention of Congress to include retirement provisions in the Bankruptcy Reform Act of 1978. In order to speed up the legislation and insure its passage, bankruptcy judges agreed for retirement provisions to be stricken so that a new reform act could become law.

Bankruptcy judges were promised a retirement system at an early date. However, no uniform retirement system has been passed for bankruptcy judges, but the old retirement system was enhanced. It has an 80 percent cap and requires each judge to contribute 8 percent of his gross pay. Very few sitting judges are covered by the old system.

A few judges have a modified civil service type retirement system, and others have only social security. When Congress passed the Federal Employees' Retirement System for government employees (FERS), it made no provision for bankruptcy judges or magistrates. Any bankruptcy judge or magistrate appointed after December 30, 1983, is under the FERS system. These judges receive no benefits under the civil service retirement program.

As you know, the current general government retirement system (FERS) is

designed for the typical career government employee who enters civil service in his early 20's and remains for many years. This is quite different from a bankruptcy judge who should be older.

Bankruptcy judges, recommended by the Merit Screening Panels appointed by each Circuit Court of Appeals, should be individuals who are at the peak of their legal experience and earnings. The ideal candidate for judge would be too old to serve sufficient years to obtain a meaningful retirement under the general government retirement system.

As Mr. Mecham pointed out, for nearly 50 years Congress has recognized the need for a different retirement system for territorial judges and other federal judges.

The Judicial Conference of the United States has concluded it is necessary to include United States Bankruptcy Judges and Magistrates in the retirement program which has already been provided for other federal judges.

In a recent meeting with bankruptcy judges Chief Justice Rehnquist said he and the Judicial Conference were "solidly behind" this retirement legislation. The Chief Justice explained:

> . . . I am very interested in the fate of all the members of the Federal judicial family and how they are doing. I think it would be a very ill-informed person who didn't realize the transformation that has taken place in the role of bankruptcy judges from say, the early '70's before the enactment of the 1978 Act to the present time. The complex sorts of cases which you handle and the broad jurisdiction now confided to bankruptcy courts are a reflection of Congress' increased confidence in bankruptcy judges. People generally are aware of the fact that this confidence has been justified and wisely reposed. I think the public is coming to know and to appreciate the valuable work that the bankruptcy judges are doing.

It is not apparent why Congress would provide a retirement system to one group of federal judges and deprive another group of judges of an equally good system.

The retirement bill offers indirect benefits to the government. It will encourage senior judicial officers to remain available after retirement to serve as senior judges. Historically the caseload in the bankruptcy court has grown much faster than available judicial resources to cope with that workload. Recently there were added 52 judgeships to deal with caseload that has more than doubled since 1978. See: Table of Filings, Exhibit 1.

The availability of a pool of senior judges is necessary if bankruptcy courts are to respond to the ever increasing caseload. This pool of senior judges will reduce future requests for additional bankruptcy judges. This would amount to a considerable savings. The cost of establishing one new judgeship is close to three quarters of a million dollars, and then there is an annual cost of approximately $300,000.

Since 1980 we have seen approximately 73% of the sitting bankruptcy judges leave the bench. Attached to my testimony is a list of the names

of the judges who have resigned, retired, or died. Exhibit 2. A very large majority of those leaving the bench have simply quit and gone into the private practice of law where they can increase their income and obtain better retirement benefits.

Attached to my testimony is a letter to the editor which appeared on the Editorial Page of The New York Times, September 23, 1987. Exhibit 3.

The letter was written by John J. Dilenschneider, Chairman of the Association of Former Bankruptcy Judges. Roster of Members, Exhibit 4. In his letter former judge Dilenschneider notes:

> The number of bankruptcy judges who resigned from the court in the last three years is more than double the number of those of us who left the bench in the 1970's and early 80's combined. I know, I am a bankruptcy reorganization attorney and chairman of what I regret to say is one of the fastest growing legal organizations in the country, the Association of Former Bankruptcy Judges.

Former judge Dilenschneider's letter contains this important paragraph:

> A survey of the membership of our association indicates that low pay and inadequate retirement benefits have been the chief reasons many veteran judges have heeded the call and left the court for private practice.

Let me share with you the thoughts of several former bankruptcy judges. The first is former bankruptcy judge Ralph R. Mabey, now in private practice with the law firm of LeBoeuf, Lamb, Leiby & MacRae in Salt Lake City, Utah.

> [O]ver the past eight years, there has been a 73% turnover of bankruptcy judges; this hemorrhaging is far greater than in any other federal judicial office and is attributable in significant part to the present lack of retirement benefits.
>
> The highlight of my professional career was my service as an United States Bankruptcy Judge . . . Nevertheless, I became part of the 73% of the bench who reluctantly declined further service as the bankruptcy judges' retirement plan -- promised since before 1979 -- repeatedly foundered.

Former bankruptcy judge David Kline is now in private practice with the law firm of Kline & Kline in Oklahoma City, Oklahoma. In commenting on why he left the bench after 14 years of service he said:

> I think it can be fairly stated that the complete absence of any judicial retirement was one factor.

> [A]dequate salaries and retirement benefits are essential to establish needed continuity in the bankruptcy court. The private practice of bankruptcy law will offer continuing irresistible opportunities to sitting judges if bankruptcy judge salaries and retirement benefits are not sensibly addressed.

Another former bankruptcy judge, Joseph A. Gassen, is engaged in the private practice of law with Stroock, Stroock & Lavan, New York City, New York. He made the following comments:

> I am one of those who for financial reasons was forced to resign as a United States Bankruptcy Judge in November 1984 after four and one-half years of service on that bench.
>
> Except for the fact that I had run out of money while serving in that capacity, I may have continued on if the retirement benefits would have outweighed the further belt tightening that would have been required for continued service.
>
> I hope that . . . in the future we will not see an increasing reliance on younger and short-term incumbents on the bankruptcy bench. The role of the Bankruptcy Court in our society requires that experienced and capable judges be encouraged to apply for and retain these positions.

Former bankruptcy judge Bill H. Brister is now engaged in the private practice of law with the firm of Winstead, McGuire, Sechrest & Minick in Dallas, Texas. In writing about his reasons for leaving the bench, he states:

> I can categorically state that the sole reasons for my resignation from the bench were salary and retirement benefits.
>
> I found that with children in college, I was spending all of my income and approximately $10,000 annually from accumulated savings in maintaining a normal living standard. When one adds to that the fact that the retirement system available to me was woefully inadequate, I was not properly serving my family by remaining on the bench.
>
> [T]he AO told me that the value of my retirement benefits, after 14 years of full- and part-time service, approximated $26,000. The contribution made by my law firm to my retirement in my first year with the firm exceeded that amount.

Former bankruptcy judge William M. Schultz is engaged in the private practice of law with Dotson, Babcock, & Scofield in Houston, Texas. He tells why he could not stay on the bankruptcy bench as follows:

> . . . three in college at the same time. I could not afford to continue because of compensation.
>
> The economic impact of bankruptcy court decisions is enormous, permeating most aspects of the business community. It is vital to entice qualified judges to accept appointments and remain on the bench.
>
> The inequitable conditions with regard to the bankruptcy judges' retirement benefits and compensation which presently exist must be alleviated.

The next former bankruptcy judge was serving in Washington, D.C. at the time of his resignation. He is Roger M. Whelan, and he is now engaged in the private practice of law with Verner, Liipfert, Bernhard, McPherson & Hand, Washington, D.C. Here are some of the things which former judge Whelan had to say:

> I resigned my office on December 31, 1983, primarily because of the staggering debt-load which I had incurred over the 12 years that I served as a federal judge.
>
> I found it necessary to severely limit even basic expenditures. We rarely dined out and in the 12 years I served as a judge, we never took a vacation outside of our home state of Maryland.
>
> At the time of my resignation . . . I found myself with no retirement benefits, and an extraordinarily high level of consumer debt.
>
> It is incredible to think that the price of public service should be the annihilation of one's personal financial resources and the only available and intelligent alternative is to resign an office which was originally taken with the expectation of serving the remainder of my professio career years.

The next comment comes from the Chief United States District Judge for the Southern District of Indiana. He is former bankruptcy judge Gene E. Brooks.

> I left the bankruptcy bench after serving some twelve years.
>
> Perhaps, as equally significant was the inadequate retirement plan . . . .[W]hen I resigned as bankruptcy judge, I was no longer permitted to participate in the bankruptcy judge retirement plan. I had to start like a new employee under the Article III plan, not being given any credit for my years of service as a bankruptcy judge.
>
> However, the principal factor that persuaded me

> to make the change was the retirement plan. I determined that even though I was required to start from scratch, my ultimate benefits, upon retirement, would be almost double what I could receive if I remained as a bankruptcy judge.
>
> [T]he job the bankruptcy judges are doing throughout this country is deserving of a better retirement system.

The final quote comes from sitting Bankruptcy Judge Wesley W. Steen of the Middle District of Louisiana. He was first appointed on October 19, 1983, and received his 14-year appointment on December 6, 1984. He has submitted his resignation to the Chief Judge of the Fifth Circuit and plans to take a position with a private law firm in Houston, Texas.

> I have tried very hard to resist the temptations to leave the position that I enjoy so much. I have over the past year, in fact, refused at least three opportunities to leave the bench.
>
> There came a time, however, when concern for the future of the bankruptcy bench, personal opportunities in private practice, and the financial needs of my maturing family left me no choice.
>
> My concern for the future of the bankruptcy bench in large part derives from the decrease in relative pay that resulted from the recent pay bill for federal judges; if this is a harbinger, the bankruptcy bench is headed for difficulty in attracting and holding qualified judges since those with experience will be required to accept substantial pay cuts, even more in relative terms than we accepted in the past. [In Jan. 1987 the pay of bankruptcy judges and magistrates was reduced to 81% of the pay of district judges. Historically, the ratio has been about 90%.]
>
> I don't think anyone expects judges tc receive compensation comparable to private practice; I'm referring to pay sufficient to allow sitting judges to be able to afford not to leave the bench.

Exhibit 5 is Volume III of the Report submitted to the Commission on Legislative, Executive and Judicial Salaries. This report is an in-depth analysis of the plight of the bankruptcy court. The facts and figures show why in the past seven years a majority of sitting bankruptcy judges have resigned or retired from the bench prematurely.

These former judges with their specialized expertise have been recruited by law firms who understand and appreciate their value as superb legal technicians with an insight that could only be possessed by a former federal judge.

When a bankruptcy judge leaves the bench before the end of his term or declines reappointment because of salary and retirement considerations, then our federal court system sustains damage though not always immediately obvious. Let us hope that the damage is not irreparable and

that the young new judges will not only be adequate but will remain on the bench after learning how to be a judge.

The last Quadrennial Commission took note of this serious problem as follows:

> It is hard to assess the real cost of replacing an experienced federal judge who resigns at the pinnacle of his career, but the implications for the judicial system are severe. It takes fully five years for a qualified attorney, once appointed to the federal bench, to reach peak efficiency. Early departure thus creates a gap in the system which at best cannot be filled for half a decade, but which at worst may result in a permanent diminution in the capabilities of the service.

Problems in the federal judiciary were discussed in this month's issue (October 1987), of the American Bar Association Journal. There is an article (at page 94) on "The Age of Judges: Reagan's Second-Term Appointees". The article concerns the Reagan Administration's emphasis on youthful appointments to the federal bench. The article notes that resignations from the Article III bench have doubled since the early 1970's and that this is primarily due from low salaries.

At page 97 the article states:

> Raising judicial salaries is not only a matter of basic fairness but a recognition of the need to attract and retain the best legal talent to the federal bench.
>
> The issue of judicial salaries and the trend toward younger judicial appointees are linked, and may have surprising and unwelcome consequence for the administration.
>
> * * *
>
> And by failing to push for substantially higher salaries, the likelihood is increased that the bright young Reagan appointees may cash in after several years on the bench and move to private practice, where earnings of at least four or five times the judicial compensation await them.

The article asked:

> Why should any judge - conservative, moderate or liberal - choose to suffer financially by remaining on the bench? We are soon approaching the point where only those already wealthy, or unusually altruistic, or not talented enough to command a lucrative income in private practice will populate the federal judiciary.

The quotes above refer exclusively to Article III judges. Now here is what the article has to say on page 97 about all federal judges.

> Federal judges, magistrates, and bankruptcy judges handle sensitive, complex and often enormously important cases. There is a risk that a high turnover, coupled with younger, inexperienced judges, will disrupt the administration of justice.
>
> Federal bankruptcy judges, for example, deal not only with the creditor-debtor problems of private individuals but with major corporations such as Texaco, Manville, A.H. Robins and the DeLorean Motor Company. The National Conference of Bankruptcy Judges is rightly alarmed by the trend, already begun, of judges leaving to accept positions with large commercial law firms and being replaced by younger lawyers who, in turn, serve for less than five years and - just when they have mastered their jobs - move on to a lucrative private practice.
>
> The article concludes:
>
> And it is not in anyone's interest for the best and most experienced judges to leave the bench because of inadequate compensation. Low salaries would also plague the recruitment efforts of a future Democratic administration.

The First Quadrennial Commission wrote that "Judges cannot be expected to endure the diminution of their purchasing power much longer without the result being severe recruitment, retention and morale problems." The early retirement of more than half of the bankruptcy bench reflects the accuracy of these predictions by the First Commission.

With inadequate salaries, retirement benefits are even more important. The Third Quadrennial Commission wrote in 1977 that "a small investment now will pay large dividends in the future," and Irving Shapiro, retired Chairman of DuPont, told the 1981 Commission:

> In industry, we know that good employees get better with years of experience, and we have to do what we can to make it worth their while to stay with us. Industry recognizes its own self interest and finds ways to keep these people. I ask that a way be found for the government to do the same.

One way to recruit and keep good bankruptcy judges is to provide them with a retirement system like other federal judges. The recommendation of the Judicial Conference does that. Another way to keep good judges is to compensate them fairly. Bankruptcy judges and magistrates were badly hurt by the White House pay proposal which reduced the historic percent linkage with district judges. There was no "justification" for this as pointed out by the Congressional Research Service of The Library of Congress. Exhibit 6. Chairman Kastenmeier in a letter dated February 25, 1987, wrote to the chief bankruptcy judge in his district, "I would be glad to co-sponsor appropriate legislation correcting the errors made in the President's salary proposals." Senator Cochran introduced S.696, which has now passed the Senate as an amendment to other legislation.

Congress is moving to correct benefits available to magistrates and bankruptcy judges. For your attention to our problems we are most grateful.

In my honest opinion you must improve benefits in order to reverse the steady stream of resignations from the bankruptcy bench, restore some stability to that court, and improve the ability of our government to recruit high quality lawyers to serve in the specialized position of bankruptcy judge.

Exhibit 1

U. S. BANKRUPTCY COURTS
Filings During the Twelve Month Periods Ended
June 30, 1979 through 1987

Year	Total	Terminations	Pending
1979 ACT	226,476		
1980 Code	210,364		
1981 Code	360,329		
1982 Code	367,866	268,243	461,287
1983 Code	374,734	298,715	537,306
1984 Code	344,375	304,014	577,567
1985 Code	364,536	333,158	608,945
1986 Code	477,856	358,224	728,577
1987 Code	561,278	481,351	808,504

Filings under the Bankruptcy Code continued to rise in 1987, up more than 17 percent to 561,278.

The bankruptcy courts terminated 481,351 bankruptcy petitions during 1987, more than 34 percent above the number terminated last year. Despite the substantial rise in terminations, the pending caseload rose 11 percent reaching 808,504 on June 30, 1987.

Source: 1987 Annual Report of the Director, Administrative Office of the United States Courts.

Exhibit 2

Bankruptcy Judges Who Have Left The Bench
from 1980 to 07/31/87 [161]

District	Name	Left
Louisiana (M)	Posner, Harvey H.	02/29/80
Pennsylvania (W)	Schaffler, Bernhard	03/31/80
Connecticut	Trevethan, Robert E.	06/30/80
New York (E)	Costa, Joseph V.	07/11/80
Georgia (M)	Patterson, Jr., W. Joseph	07/31/80
Virginia (W)	Hickson, Philip	08/31/80
Oregon	Hogan, Michael R.	09/30/80
Arizona	David, Edward E.	05/01/81
Michigan (E)	Hackett, Harry G.	06/24/81
Virgin Islands	Holmes, William T.	07/24/81
New Mexico	Puccini, Jr., Oreste L.	08/01/81
Maryland	Goldburn, Glenn J.	08/01/81
Tennessee (M)	Hippe, Jr., Russell H.	10/01/81
Maine	Cyr, Conrad K.	10/01/81
Washington (E)	Hanel, L. Warden	11/15/81
New Mexico	Johnson, Robert A.	11/30/81
Alabama (N)	Vance, William R.	11/30/81
Texas (S)	Schultz, William M.	12/31/81
Wisconsin (W)	Hilgendorf, Howard	12/31/81
Michigan (E)	Patton, David H.	01/04/82
Texas (S)	Blinn, John R.	01/31/82
Maryland	Lebowitz, Harvey M.	02/01/82
Colorado	Keller, Jr., Glen E.	02/01/82
Missouri (E)	Shanahan, John J.	03/03/82
Ohio (S)	Sidman, Robert J.	05/01/82
Nevada	Goldwater, Bert M.	05/31/82
Kentucky (W)	Bland, Stewart E.	05/31/82
Colorado	Moore, John P.	07/01/82
Minnesota	Dim, Jacob	07/06/82
New York (S)	Babitt, Roy	07/31/82
Pennsylvania (M)	Wood, Thomas	08/06/82
Michigan (E)	Bobier, Harold H.	09/30/82
Oklahoma (W)	Kline, David A.	09/30/82
Ohio (N)	Schlachet, Mark	10/04/82
Arkansas (E/W)	Adams, Arnold M.	11/07/82
California (C)	Moriarty, James E.	11/09/82
New York (S)	Lewittes, Joel	01/14/83
Ohio (N)	Molitoris, Joseph T.	01/21/83
California (S)	Katz, Herbert	03/15/83
Mississippi (N)	Raphael, Eugene J.	04/30/83
Arizona	Caldwell, Hugh M.	05/03/83
Oklahoma (N)	Rutledge, William E.	05/20/83
Arizona	Maggiore, Vincent D.	05/31/83
Texas (N)	Gandy, Dean M.	06/01/83
Utah	Mabey, Ralph R.	07/01/83
Texas (S)	Patton, Jr., Edward H.	08/15/83
New Hampshire	Betley, Joseph J.	08/22/83
California (C)	Ordin, Robert L.	09/01/83
Texas (N)	Flowers, Ernest J.	09/15/83

District	Name	Left
Minnesota	Owens, Kenneth G.	09/24/83
Oklahoma (E)	Inglish, George R.	09/30/83
Louisiana (M)	Hebert, A. Leon	09/30/83
West Virginia (S)	Flowers, Edwin F.	10/12/83
Michigan (E)	Walker, Harvey D.	10/27/83
Michigan (E)	Woods, George E.	11/15/83
North Dakota	Bullis, Harold O.	11/17/83
Oregon	Luckey, Clarence	11/30/83
California (C)	Bergener, John E.	11/30/83
Minnesota	Nordin, Hartley	12/31/83
Dis. of Columbia	Whelan, Roger M.	12/31/83
Minnesota	McNulty, Patrick J.	02/15/84
California (N)	Hughes, Robert L.	02/29/84
Arkansas (E&W)	Baker, Charles W.	03/25/84
California (C)	Phelps, Aaron K.	03/31/84
Oregon	Johnson, Folger	03/31/84
New Jersey	Lipkin, William	04/30/84
Nevada	George, Lloyd D.	05/03/84
New York (S)	Galgay, John J.	05/27/84
Indiana (N)	Nehrig, Russell H.	06/27/84
Idaho	Young, Merlin S.	07/01/84
Montana	Gray, Orville	07/09/84
New Jersey	Hill, Richard W.	07/20/84
West Virginia (N)	Kamlowsky, John H.	07/28/84
New York (E)	Price, Manuel J.	07/31/84
California (C)	Ayer, John D.	08/25/84
Alabama (M)	Hopper, Leon J.	08/25/84
Illinois (N)	Merrick, Richard L.	08/31/84
Michigan (E)	Berstein, Stanley B.	09/08/84
Illinois (N)	Fisher, Lawrence	10/15/84
Illinois (N)	James, Thomas W.	10/30/84
Florida (S)	Gassen, Joseph A.	10/31/84
Alabama (S)	Caffey, Jr., William G.	12/31/84
Ohio (S)	Herbert, Thomas M.	12/31/84
Texas (S)	Peden, Phil	02/01/85
New York (S)	Ryan, Edward J.	02/28/85
California (S)	Pyle, Ross M.	02/28/85
Ohio (S)	Anderson, Charles A.	02/28/85
Pennsylvania (W)	Washabaugh, Jr., William B.	03/22/85
New York (E)	Radoyevich, Boris	03/31/85
Ohio (N)	Batchelder, Alice M.	04/15/85
Alabama (N)	Coleman, Stephen B.	04/16/85
Georgia (N)	Norton, Jr., William L.	04/30/85
Ohio (S)	Kerr, Ellis w.	04/30/85
California (C)	Hyer, William H.	05/31/85
Texas (W)	Thompson, Bert W.	05/31/85
New Jersey	Stark, Amel	05/31/85
Pennsylvania (W)	Gibson, Gerald K.	06/12/85
Nebraska	Crawford, David L.	06/28/85
Illinois (C)	Lipkin, Max J.	06/30/85
New York (N)	Marketos, Leon J.	06/30/85
Vermont	Marro, Charles J.	07/31/85
Washington (W)	Treadwell, Kenneth S.	09/01/85
Texas (N)	Ford, John C.	09/03/85
Texas (N)	Brister, Bill H.	09/30/85
Iowa (N)	Thinnes, William W.	09/04/85
Texas (E)	Huffstutler, Joe D.	09/30/85
Illinois (C)	Coutrakon, Basil H.	11/30/85
Missouri (W)	Barker, Jr., Frank P.	11/30/85

District	Name	Left
Colorado	Gueck, Jay L.	12/10/85
Massachusetts	Lawless, Thomas W.	12/31/85
Missouri (W)	Pelofsky, Joel	12/31/85
Mississippi (S)	Eaton, III, Barney E.	01/14/86
Massachusetts	Glenn, Paul W.	02/28/86
Arizona	Scanland, William A.	03/01/86
Georgia (M)	Moseley, Jr., Algie M.	03/31/86
Wisconsin (E)	Ihlenfeldt, Dale E.	03/31/86
New Jersey	DeVito, Dominick J.	04/07/86
Kansas	Morton, Robert B.	05/02/86
Georgia (S)	Coolidge, Herman W.	05/30/86
California (E)	Woodward, Robert E.	05/31/86
California (N)	Brown, Conley S.	06/01/86
Ohio (S)	Kelleher, Duane J.	06/30/86
Minnesota	Kishel, Gregory F.	09/07/86
Virgin Islands	Sheen, Albert A.	07/09/86
Ohio (S)	Pettigrew, Jr., Grady L.	07/31/86
Louisiana (W)	Smallenberger, LeRoy	08/08/86
Florida (N)	Sauls, N. Sanders	08/15/86
Pennshlvania (E)	King, Jr., William A.	08/26/86
Louisiana (W)	Bernard, Jr., Francis	09/01/86
Mississippi (S)	Roberts, T. Glover	09/04/86
Texas (N)	McConnell, Michael A.	09/14/86
California (C)	Pagter, Ralph G.	09/23/86
Iowa (S)	Stageman, Richard F.	09/26/86
Illinois (N)	Hertz, Frederick J.	09/30/86
Michigan (W)	Nims, Jr., David E.	09/30/86
Puerto Rico	Hernandez-Rodriguez, Antonio I.	09/30/86
Tennessee (E)	Bare, Clive W.	09/30/86
Wisconsin (W)	Frawley, William H.	09/30/86
Missouri (E)	Brauer, Robert E.	09/30/86
Illinois (S)	Trabue, James D.	09/30/86
Minnesota	Connelly, John J.	09/30/86
Pennsylvania (E)	Goldhaber, Emil F.	09/30/86
Indiana (N)	Rodibaugh, Robert K.	09/30/86
California (C)	Mednick, Richrad	09/30/86
Virginia (W)	Wilson, III, Thomas J.	09/30/86
Alaska	Williams, II, J. Douglas	09/30/86
North Carolina (M)	Reynolds, Rufus W.	09/30/86
Oklahoma (W)	Berry, Robert L.	09/30/86
Indiana (S)	Sufana, Nicholas W.	09/30/86
Illinois (N)	Toles, Edward B.	10/01/86
California (N)	Wolfe, Cameron W.	10/01/86
Puerto Rico	Beckerleg, William H.	10/01/86
Michigan (W)	Heitman, Marvin L.	12/31/86
Kentucky (W)	Deitz, Jr., Merritt S.	01/30/87
Colorado	McGrath, John F.	03/20/87
Tennessee (W)	Leffler, William B.	04/11/87
Illinois (N)	Eisen, Robert L.	07/31/87

Exhibit 3

THE NEW YORK TIMES
September 23, 1987

Keep Bankruptcy Judges on the Bench

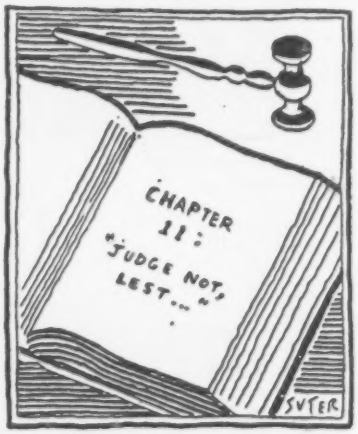
To the Editor:

Your article on merger fever among law firms (Business Day, Aug. 25) noted the demand for experts in bankruptcy law. Legal headhunters increasingly seek experts in insolvency law not only from law firms but also from the ranks of bankruptcy judges.

The number of bankruptcy judges who resigned from the court in the last three years is more than double the number of those of us who left the bench in the 1970's and early 80's combined. I know. I am a bankruptcy-reorganization attorney and chairman of what I regret to say is one of the fastest growing legal organizations in the country, the Association of Former Bankruptcy Judges.

Today, with large corporations increasingly using Chapter 11, the continuity and stability of our bankruptcy bench through experienced judges is very important. A survey of the membership of our association indicates that low pay and inadequate retirement benefits have been the chief reasons many veteran judges have heeded the call and left the court for private practice.

One incentive for judges to serve out their terms would be the enactment of H.R. 2586, now before the Congress. That bill provides that bankruptcy judges and United States magistrates receive the same retirement benefits that tax court judges have had for more than 15 years.



Every company that might come before the Bankruptcy Court in any capacity — and that, of course, means every company doing business in the United States — ought to support H.R. 2586.

JOHN J. DILENSCHNEIDER
Columbus, Ohio, Sept. 1, 1987

Exhibit 4

ROSTER
ASSOCIATION OF FORMER BANKRUPTCY JUDGES
OCTOBER, 1987

Chairman	-	John J. Dilenschneider (Columbus)
Secretary	-	Robert J. Sidman (Columbus)
Board	-	Daniel R. Cowans (San Jose)
		Ezra Cohen (Atlanta)
Newsletter	-	Saul Seidman (Hartford)

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Exhibit 5

PROMISES MADE,
PROMISES STILL UNKEPT:
RESTORATION OF INFLATION-INDUCED
SALARY CUTS FOR TOP GOVERNMENT OFFICIALS

A REPORT TO THE COMMISSION

ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

VOLUME III

Submitted by:

Kaye, Scholer, Fierman, Hays & Handler

With the Support

of

The Corporate Committee for
Fair Compensation of the
Federal Judiciary

and

Bankers Trust Company
Chase Manhattan Bank
Chemical Bank
Irving Trust Company
Manufacturers Hanover
Trust Company
Morgan Guaranty Trust Company
National Westminster Bank
Republic National Bank

November 3, 1986

TABLE OF CONTENTS

		Pages
I.	INTRODUCTION	1
II.	JUSTIFICATION FOR SALARY RECOMMENDATION	3
	A. Recommendation Seeks to Restore Salary Parity Between Judges of the Bankruptcy and District Courts	3
	B. Bankruptcy Judges are the Lowest Paid Officials Within the Commission's Jurisdiction	5
	C. The Disparity in Compensation was Caused by a Quirk in the Legislative Process	6
	D. Government Officials Appearing in Bankruptcy Court Earn More Than the Judges	7
III.	BRIEF HISTORY AND RESPONSIBILITY OF BANKRUPTCY COURT SYSTEM	10
	A. Brief History of Bankruptcy Court System	10
	1. Jurisdiction Lodged in the District Court	10
	2. Compensation and Term of Referees	11
	3. The Coming of Reform	12

Pages

B. Responsibility of Bankruptcy Court..... 15

C. Management of Large Caseloads..... 17

IV. PROFILE OF THE MODERN BANKRUPTCY JUDGE..... 20

V. EFFECT OF INADEQUATE COMPENSATION ON THE BANKRUPTCY BENCH..... 24

A. The Traditional Problems of Recruitment, Retention and Morale Apply with Equal Force to the Bankruptcy Court..... 24

B. Record Resignations Occur on the Bankruptcy Court Because Family Economic Circumstances and Private Law Firm Opportunities are Combined Pressures that Outweigh the Advantages of Service on the Bankruptcy Court..... 26

1. Sacrifice of Family Goals..... 26

2. Impact of the Knowledge of Private Bar Earnings..... 28

VI. CONCLUSION..... 32

I. INTRODUCTION

In Volumes I and II of this Report we discuss in detail the crisis facing the Nation in terms of its ability to recruit and keep top quality senior federal officials. Chapter Three of Volume I observes that "[t]he need for rectification of top government salaries is nowhere more acute than in the judicial branch".[1] Up to now, our analysis of the compensation problem has focused almost exclusively on Article III judges.[2] By doing so, we do not mean to suggest that Article III judges are the only judicial officers in need of salary repair. Rather, the operative theory is that if the salaries of Article III judges are adjusted upward, then other federal judicial officers will benefit as well. That is because the salaries of the latter group are linked in some way to those of the former group.

Nevertheless, our research on the financial plight of judges has revealed alarming information and statistics with

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[1] Volume I, p. 38.

[2] That is to say, the federal judicial officers appointed by the President, confirmed by the Senate, and constitutionally permitted to hold federal judicial office for a lifetime without salary diminution. Article III, section 1 of the Constitution.

respect to non-Article III judges.[3] Specifically, we found that judges who serve and have served on bankruptcy courts are (1) retiring or resigning in record numbers well before the end of their fixed terms, (2) ascending to the bankruptcy bench when they are relatively young and have less experience, (3) confronting post federal employment options that tend to create the appearance of conflict, if not conflict in fact, and (4) suffering from the same debilitating effects of inadequate compensation as Article III judges,[4] but without the same degree of job security that serves as a stabilizing influence for Article III judges. Thus, the factual circumstances indicate that the special problems faced by bankruptcy judges need a full airing before the 1986 Interim Commission on Executive, Legislative and Judicial Salaries. This Volume of the Report is therefore devoted exclusively to a discussion of the compensation problem as it relates to bankruptcy judges.

---

[3] That is to say, federal judicial officers whose courts are not vested with the full judicial power of the United States and who themselves are not possessed with the attributes of life tenure and no salary diminution as set forth in Article III of the Constitution. These officers serve on courts created pursuant to Congress' plenary power to establish tribunals in "'specialized areas having particularized needs and warranting distinctive treatment.'" Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 62 (1982). These tribunals are often referred to as "legislative courts." Bankruptcy courts, however, were not established by Congress as "legislative courts," Id. at 63, but have been referred to as "adjunct[s]" to the district courts, 28 U.S.C. § 151(a) (1982), or, as they are now statutorily defined, as "unit[s]" of the district courts. 28 U.S.C.A. § 151 (West Supp. 1986).

[4] See Volume I, pp. 44-52.

II. JUSTIFICATION FOR SALARY RECOMMENDATION

A. Recommendation Seeks to Restore Salary Parity Between Judges of the Bankruptcy and District Courts

In Volume I of this Report, we recommended a salary of $115,000 for United States bankruptcy judges.[5] There are substantial reasons to justify this recommendation beyond the incontrovertible premises that (1) inflation has actually cut the salary of top government officials, and (2) private sector salaries have far out-distanced government pay. First, this salary figure is roughly 90% of the salary recommended for United States district court judges.[6] It restores the parity that has historically existed between the salaries of district and bankruptcy court judges, which, in recent years, has slipped slightly. Under the present salary structure, district court judges earn $78,700 and bankruptcy judges earn $68,400. The salary of bankruptcy judges is now approximately 87% of that of a district court judge. Further, neither the current salary nor the recommended salary figure takes into consideration the substantial

---

[5] See Volume I, Table 6, p. 18.

[6] We arrived at our salary recommendations by taking the midpoint between the high and low recommendations (in current dollars) of past Commissions and rounded these figures to the nearest thousand. Thus, the salary recommended for district court judges is $127,000. Ninety percent of this amount is $114,300. Rounded to the nearest thousand it is $115,000. See Volume I, pp. 16-18.

amount of contribution that bankruptcy judges make for pension benefits under the Civil Service Retirement System.[7] Until recently, the standard amount deducted from a bankruptcy judge's salary was 7%;[8] it is now 8%.[9] The retirement pension of Article III judges is non-contributory.[10] Thus, in actuality, the salary recommendation for bankruptcy judges is only 82% of a district court judge's salary.[11]

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[7] 5 U.S.C. § 8334 (1982).

[8] Id. at § 8334(a)(1).

[9] 5 U.S.C.A. § 8334(a)(1)(West Supp. 1986); see Memorandum of the Administrative Office of the United States Courts, May 20, 1986 for an explanation of the statutory modifications to civil service retirement coverage for certain federal judicial officers. See also Remarks of William Burchill, General Counsel, Administrative Office of the United States Courts, to the First Circuit Judicial Conference, October 15, 1986, on file at the Administrative Office of the United States Courts in Washington, D.C.

[10] However, Article III judges who elect to do so must contribute 5% of their salary to the Judicial Survivor's Annuities' Fund in order for their spouses to receive a pension upon the death of the judges. 28 U.S.C. § 376(b), as amended by the Judicial Improvements Act of 1985, Pub. L. No. 99-336, 100 Stat. 633 (1986).

[11] The Judicial Conference of the United States has recommended to Congress that it establish a non-contributory pension system for bankruptcy judges. See Report of the Proceedings of the Judicial Conference of the United States, March 11-12, 1982, p. 17; see also Report of the Proceedings of the Judicial Conference of the United States, March 5-6, 1980, pp. 31-32.

B. Bankruptcy Judges are the Lowest Paid Officials Within the Commission's Jurisdiction

Further, every single office within the salary setting jurisdiction of the Commission has a salary level that exceeds that of a bankruptcy judge,[12] except the office of Governor to the Board of the United States Postal Service.[13] This situation has no historical precedent and exists for no discernible reason. In fact, in 1969 several of the offices under the Commission's jurisdiction carried a salary level equal to the salary of bankruptcy judge.[14] This salary equivalency was established well before Congress enhanced the role and status of the bankruptcy court by substantially expanding its jurisdiction, providing it with a court clerk, and permitting the judges on that court to hire a law clerk and a secretary.

---

[12] The salary level of full-time United States Magistrates is equivalent to the bankruptcy judges' salary level.

[13] Membership on the Board of Governors of the United States Postal Service entitles a person to annual remuneration of $10,000 plus $300 per meeting. 39 U.S.C. § 202(a)(1982). It is not a full-time position.

[14] These offices were: Claims Court Commissioners (now U.S. Claims Court judges), positions at Executive Level V, the Deputy Public Printer, Deputy Librarian of Congress, Assistant Architect of the Capitol, and Deputy Director of the Administrative Office of the U.S. Courts. The 1976 and 1980 Quadrennial Commissions recommended that bankruptcy judges' salaries be on a par with Executive Level IV (previously they were on a par with Level V), the Librarian of Congress, Architect of the Capitol, and the General Counsel of the General Accounting Office. Their recommendations were not heeded.

C. The Disparity in Compensation was Caused by a Quirk in the Legislative Process

Third, an unintended consequence of the enactment of the Bankruptcy Reform Act of 1978[15] is that the salary of bankruptcy judges did not increase with that of other top-level government employees that year. The reason for this is that the 1978 Reform Act itself established a salary level for bankruptcy judges equal to the fiscal year 1978 salary of Executive Level IV officials, which was $50,000.[16] Before the 1978 Reform Act was signed, the President issued an Executive Order which raised the Executive Level IV salary from $50,000 to $52,800 as of October 1, 1978.[17] Through legislative inadvertence, the technical correction to amend the 1978 Reform Act to reflect the increase in salary for positions at Executive Level IV was never made. The 1978 Reform Act was signed into law on November 6, 1978, with the $50,000 salary figure for bankruptcy judges in-

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[15] Pub. L. No. 95-598, 92 Stat. 2549 (1978) [hereinafter the "1978 Reform Act"].

[16] 28 U.S.C. § 154 (1982). Setting the salary at $50,000 represented a $1,500 increase in salary for bankruptcy judges. The main significance of the increase did not lie in its amount, however. The important point is that the increase represented a congressional recognition that bankruptcy judges should be compensated at a rate commensurate with their status as federal judicial officers.

[17] See President Carter's Executive Order 12087, 43 Fed. Reg. 46,823 (October 7, 1978). This raise occurred pursuant to the Executive Salary Cost-of-Living Adjustment Act, Pub. L. No. 94-82, 89 Stat. 419 (1975).

tact.[18] As a consequence, the will of the Congress to pay bankruptcy judges the same as Executive Level IV officials was frustrated by the timing of the effective date of the 1978 Reform Act. The 1980 Quadrennial Commission sought to correct this error by recommending the same salary for bankruptcy judges and Executive Level IV officials. However, none of the recommendations of the 1980 Commission were approved.[19] The disparity has persisted to this day.[20]

D. Government Officials Appearing in Bankruptcy Court Earn More Than the Judges

Finally, the failure to place bankruptcy judges at least on a par salary-wise with Level IV Executives has created a situation whereby bankruptcy judges are paid less than the officers of court who sometimes appear before them or fulfill administrative functions as directed by them. For example, the maximum salary level payable to Clerks of Court is Executive Level V.[21] The salary for Executive Level V is $68,700. Thus, Clerks of Court with the requisite amount of experience in government can earn more than the bankruptcy judge. Similarly,

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[18] 1978 Reform Act, 92 Stat. 2549, 2658 (1978)..

[19] See Volume II, p. 11, n. 32.

[20] See Table 1.

[21] The bankruptcy court in each judicial district has its own Clerk of Court separate from the district court. 28 U.S.C.A. § 156(b) (West Supp. 1986).

TABLE 1

HISTORY OF COST-OF-LIVING ADJUSTMENTS FOR
U.S. BANKRUPTCY JUDGES AND EXECUTIVE LEVEL IV
EMPLOYEES OCTOBER 1, 1979 to PRESENT[1]

Executive Order	Effective Date	Level IV	Bankruptcy Judges
Ex. Ord. No. 12165[2]	October 1, 1979	$56,500	$53,500
Ex. Ord. No. 12248[3]	October 1, 1980	$61,600	$58,400
Ex. Ord. No. 12330[4]	October 1, 1981	$64,600	$61,200
Ex. Ord. No. 12387[5]	October 1, 1982	$67,200	$63,600
Ex. Ord. No. 12456[6]	January 1, 1984	$69,600	$65,800
Ex. Ord. No. 12487[7]	January 1, 1984	No Change	$66,100
Ex. Ord. No. 12496[8]	January 1, 1985	$72,300	$68,400
Ex. Ord. NO. 12540[9]	January 1, 1985	No Change	No Change

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[1] These figures represent the maximum authorized salary for each position. Appropriations to pay these salaries at the maximum authorized level were withheld on a number of occasions.

[2] 44 Fed. Reg. 58,671 (October 9, 1979).

[3] 45 Fed. Reg. 69,199 (October 16, 1980).

[4] 46 Fed. Reg. 50,921 (October 15, 1981).

[5] 47 Fed. Reg. 44,981 (October 8, 1982).

[6] 49 Fed. Reg. 347 (January 4, 1984).

[7] 49 Fed. Reg. 36,493 (September 18, 1984).

[8] 50 Fed. Reg. 211 (January 3, 1985).

[9] 51 Fed. Reg. 577 (January 7 1986). Executive Order No. 12540 adjusted the salaries of U.S. Supreme Court Justices, U.S. Circuit and District Court judges and judges of the Court of International Trade. Judges of the U.S. Claims Court and U.S. bankruptcy judges did not receive a pay adjustment at that time.

United States Trustees who are appointed by the Attorney General to assist in bankruptcy matters are authorized to be paid up to $72,300, the current salary level for Executive Level IV.[22] The ninety-one United States Attorneys who from time to time may appear before bankruptcy judges now earn $70,500, but the Attorney General is authorized to set their salary up to Executive Level IV.[23] Thus, it is anomalous that these federal officers should each receive a higher salary (without even receiving the full amount to which they may be entitled) than the judge they may appear before, or provide administrative assistance to, as in the case of the Clerk.

In sum, we believe, as the evidence proves, that the $115,000 recommended salary figure represents the minimum salary that a bankruptcy judge should receive. It restores the historical salary parity among bankruptcy judges, district judges, and other officers of court, and reverses a pattern of continuous job devaluation through legislative inadvertence. Moreover, this salary is a fair one not only because inflation has eroded the purchasing power of bankruptcy judges to a point where they now receive a salary that in real dollar terms is nearly 40% less

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[22] See Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554.

[23] 28 U.S.C.A. § 548 (West Supp. 1986).

than what the job paid in 1969,[24] but also because this is quite probably the minimal sum that it will take to reverse the steady stream of resignations from the bankruptcy bench, restore some stability to that court, and improve the ability of our government to recruit high quality lawyers to serve in as specialized a position as bankruptcy judge.[25]

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[24] In 1969, the salary of a full time bankruptcy referee was $36,000. In 1969 dollars, the current salary of $68,400 for a bankruptcy judge is the equivalent of $22,098, a 39% loss of salary due to inflation. See Volume II, Appendix 3, Table 1.

[25] We recognize that the $115,000 recommendation is $1,000 more than is recommended for positions at Executive Level IV. In order to dispose of the problem of court officers, such as United States Trustees, United States Attorneys, and Clerks of Court, earning more than the judge before whom they appear or assist in the administration of cases, the salary for bankruptcy judges should be set slightly higher. This method of adjusting pay inequities for officials who stand in dissimilar or incongruous relationships with each other is not novel. The salaries of General Schedule employees at GS-16(6) through GS-18 are limited to the rate payable to Executive Level V officials. See note following 5 U.S.C.A. § 5332 (West Supp. 1986).

III. BRIEF HISTORY AND RESPONSIBILITY OF BANKRUPTCY COURT SYSTEM

A. Brief History of Bankruptcy Court System

1. Jurisdiction Lodged in the District Court

The Bankruptcy Acts of 1841 and 1867 placed jurisdiction "over all suits between assignees in bankruptcy and adverse claimants" in the federal courts.[26] The Bankruptcy Act of 1898, however, was a more far reaching congressional attempt to provide for a uniform and comprehensive bankruptcy system in the United States. Under this law, jurisdiction over bankruptcy matters was lodged in the district courts. A referee system was established. The district court appointed "referees"[27] in bankruptcy to decide issues dealing with the distribution of assets of bankruptcy estates and to administer the distribution of those assets. The nature of this responsibility was largely administrative. The assumption underlying the Acts of 1867 and 1898 was that while the judges of the circuit and district courts were vested with jurisdiction over the administration of all cases filed and pending in their courts and of most of the controversies generated by them, the referees should assume most of the

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[26] MacLachlan, Bankruptcy § 219 at 245 (1956).

[27] Bankruptcy judges were referred to as "referees" until 1973 when the Supreme Court of the United States promulgated the Rules of Bankruptcy Procedure.

burdens imposed by this class of cases. The district court exercised a supervisory role "which was largely undefined but which was exemplified in the statutory provisions for appointment and removal of the . . . referees, the reference of cases to them, and the review of their orders."[28]

2. Compensation and Term of Referees

Under the 1898 Act, bankruptcy referees were not considered federal employees. The matter of their compensation was not considered government business. Rather, it was a private responsibility that created serious and apparent conflicts. Referees in bankruptcy were not only compensated and reimbursed for their expenses directly out of the estates they administered, but their compensation varied in proportion to the value of the

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[28] Report of the Commission on the Bankruptcy Laws of the United States, Part I, p. 94 (1973) [hereinafter the "Bankruptcy Commission Report"]. The Bankruptcy Commission Report is a thoughtful and comprehensive expose on the need for continuous study and reform of the bankruptcy system in the United States. Many of its recommendations have served as the basis for subsequent legislation affecting the structure of the bankruptcy system. For example, it recommended the separation of judicial and administrative functions in bankruptcy, that judges in bankruptcy cases be removed from any administrative duties, and that they be restricted to the performance of essentially judicial functions. Id. at 93-94. The Bankruptcy Reform Act of 1978 embodied this recommendation. The role of the bankruptcy judge is now devoted primarily to the resolution of disputes or issues involving adversary parties and other matters appropriate for judicial determination. See also S. Girth, et al., Bankruptcy: Problem, Process, Reform (1971) [hereinafter the "Brookings Report"] for a critical evaluation of the federal bankruptcy system.

estates they administered. Litigants appearing before a referee, in order to resist efforts to create or enlarge an estate to be administered under his supervision, could not easily be convinced that the effect of the judge's ruling on his compensation would not be an influential factor in his decision.[29] This system of compensation changed in 1946 when referees were placed on a federal government salary and provided retirement benefits.[30] Their term of office had been two years, but the 1946 law increased the term to six years.[31]

3. The Coming of Reform

Although several academic articles had been written on the need for additional reform in the bankruptcy system, the most comprehensive studies undertaken were the Bankruptcy Commission Report[32] and the Brookings Report.[33] Part II of the Bankruptcy Commission Report contained a draft of a bill, S. 4026, to implement the recommendations of the Commission,[34] but no action

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[29] Bankruptcy Commission Report, pp. 92-93.

[30] Act of June 28, 1946, c. 512, 60 Stat. 323.

[31] Id.

[32] See note 28.

[33] Id.

[34] S. Rep. No. 989, 95th Cong., 2d Sess. 5, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5788.

was taken.[35] Efforts to report a bankruptcy reform bill in the 94th Congress were also unsuccessful.[36]

Not until the 1978 Reform Act[37] passed the 95th Congress was there a substantial change in the bankruptcy system and laws.[38] The 1978 Reform Act eliminated entirely the referee system and established in each judicial district a court of record known as the United States Bankruptcy Court, which was to function as an "adjunct" to the district court.[39] A bankruptcy judge's salary was established at $50,000 annually.[40] Bankruptcy judges were appointed to 14 year terms[41] by the President with the advice and consent of the Senate.[42] The jurisdiction of the bankruptcy court was expanded[43] and the judges of the bankruptcy court were vested with the "powers of a court of equity, law, and

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[35] Id.

[36] Id.

[37] See note 15.

[38] The Chandler Act of June 22, 1938, c. 575, 52 Stat. 840 had attempted to make referees more like judicial officers by removing many of their administrative duties and lodging these responsibilities in the district court clerk's office or in the trustee. While these were welcomed reforms, they were not expansive when compared to the sweeping changes mandated by the 1978 Reform Act.

[39] 28 U.S.C. § 151(a)(1982).

[40] Id. at § 154.

[41] Id. at § 153.

[42] Id. at § 152.

[43] Id. at § 1471(b).

admiralty"[44], but could not enjoin another court or punish a criminal contempt not committed in their presence[45]. Under the 1978 Reform Act, judges could hold jury trials;[46] issue declaratory judgments;[47] issue writs of habeas corpus under appropriate circumstances;[48] issue all writs necessary in aid of the court's expanded jurisdiction;[49] and issue any order, process or judgment necessary or appropriate to carry out the provisions of the Bankruptcy Code.[50]

In short, the 1978 Reform Act was the most expansive overhaul of the bankruptcy system in forty years.[51] However, in a 1982 Supreme Court decision the jurisdictional provisions of the 1978 Reform Act were declared unconstitutional because they violated Article III of the Constitution.[52] Two years later, Congress responded by enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984,[53] which statute, among other

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[44] Id. at § 1481.

[45] Id.

[46] Id. at § 1480.

[47] Id. at § 2201.

[48] Id. at § 2256.

[49] Id. at § 1651.

[50] 11 U.S.C. § 105(a) (1982).

[51] See note 38.

[52] Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).

[53] Pub. L. No. 98-353, 98 Stat. 333 (1984).

things, refined the jurisdictional grant of power to bankruptcy judges that was contained in the 1978 Reform Act, but otherwise retained most of the provisions in that Act.[54]

B. Responsibility of Bankruptcy Court

As can be gleaned from a reading of the Bankruptcy Commission Report and the legislative history of the 1978 and 1984 bankruptcy reform acts, the role of the bankruptcy judge as a judicial officer has grown ever more important and essential to the efficient function of federal courts. Indeed, the motivation for the broad jurisdiction granted to bankruptcy courts in the 1978 Reform Act was the primacy of the bankruptcy judge in bankruptcy cases. District court judges had ceased to become intricately involved in the administration of and decisions in bankruptcy cases.[55] The consequence of this is that the bank-

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[54] 130 Cong. Rec. S8889 (daily ed. June 29, 1984)(statement of Senator Dole) reprinted in 1984 U.S. Code Cong. & Admin. News 586-589; see also 130 Cong. Rec. S8891 (daily ed. June 29, 1984)(statement of Senator Hatch) reprinted in 1984 U.S. Code Cong. & Admin. News 590-601. In addition, the new statute removed from the President the power to appoint bankruptcy judges and lodged it in the Circuit Courts of Appeal. 28 U.S.C.A. § 152 (West Supp. 1986).

[55] As the legislative history of the 1978 Reform Act explains:

> As the system has evolved, district judges have removed themselves further and further from the consideration of bankruptcy matters. The area has become too specialized and requires too much expertise to be able to be handled on an ad hoc basis by a generalist. The district court bench has generally rec-

(Footnote continued)

ruptcy courts now comprise a specialized court system and its judges are looked upon as specialists.[56]

As noted earlier, the bankruptcy courts have their own clerks[57] who are responsible for accepting cases, accounting for monies, supervising trustees and performing all the household functions of the court. The bankruptcy judges appoint the clerks[58] and retain the responsibility for their supervision. There are more than 4,000 clerks, deputy clerks and other staff people under the supervision of bankruptcy judges. The Budget

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(Footnote 55 continued from previous page)
ognized this fact and left bankruptcy matters to the bankruptcy judges.

H. Rep. No. 595, 95th Cong., 2d. Sess. 5, reprinted in 1978 U.S. Code Cong. & Admin. News 5963, 5971 [hereinafter "House Report"].

[56] On this point, the House Report notes:

> The reason that the bankruptcy court system works as well as it does today is because the trial judges are specialists, experienced in handling the problems that arise. They are experienced because they handle exclusively bankruptcy cases. The statutory requirement of automatic reference of bankruptcy cases was enacted because the Judicial Conference requested Congress to recognize that the bankruptcy court is specialized, and that a generalist court is unable to make the bankruptcy system work as well as it does.
>
> The result is a specialized bankruptcy court that is in fact separate from the district courts for most purposes.

Id. at 5981.

[57] 28 U.S.C.A. § 156(b) (West Supp. 1986).

[58] Id.

Committee of the Judicial Conference of the United States has recommended that for fiscal year 1988 the district courts be allotted 4,116 staff positions while the bankruptcy courts employ 4,067 staff members.[59] There are 575 district judges and 232 bankruptcy judges. This means that each bankruptcy judge has double the supervisory responsibility of a district judge.

C. Management of Large Caseloads

The workload of the bankruptcy courts has increased at the same time as the status of bankruptcy judges has been enhanced. The number of bankruptcy petitions filed in 1984 was 344,275.[60] By June 30, 1986, the number of bankruptcy petitions filed annually had jumped to 477,856, an increase of almost 39%.[61] The number of pending cases has also continued to grow. In 1984, there were 577,567 bankruptcy petitions pending before the bankruptcy courts.[62] By 1986 this number had grown to 728,577, an increase of more than 25%.[63]

The substantive reforms of the 1978 Reform Act have encouraged financially troubled businesses and individuals to

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[59] Budget Estimates for Fiscal Year 1988 as submitted to the Budget Committee of the Judicial Conference of the United States, p. 6.18 (1986).

[60] See Table 2.

[61] Id.

[62] Id.

[63] Id.

TABLE 2

U.S. District Courts
Bankruptcy Petitions Filed, Terminated
and Pending
During the Twelve Month Periods Ended
June 30, 1984, 1985 and 1986

Year	Filings	Terminations	Pending
1984	344,275	304,014	577,567
1985	364,536	333,158	608,945
1986	477,856	358,224	728,577
Percent Change 84-86	38.8	17.3	26.1

Source: 1986 Annual Report of the Director, Administrative Office of the United States Courts.

avail themselves of the protections afforded by the various chapters of the Act. In 1981, the first full year in which the reforms of 1978 were in effect, there were 7,827 Chapter 11 business reorganization petitions filed.[64] By 1986, that number had jumped to 24,442, an increase of 212%.[65] In the same period, Chapter 7 liquidation filings have risen 25% and Chapter 13 adjustment petitions have jumped 39%.[66]

The amount of assets, the volume of claims, and the value of the estates involved in these cases are staggering. The issues judges are asked to decide are wide-ranging and complex. Language in the House Report graphically illustrates this point:

> As of October 1976, there were pending in the bankruptcy courts 250,000 cases, involving 250,000 debtors. In those cases, there were over 9 million scheduled creditors; over $27 billion in scheduled assets; and nearly $43 billion in scheduled liabilities. Bankruptcy judges deal daily with issues that involve millions of dollars, and frequently dozens or hundreds of jobs of employees of struggling companies. Bankruptcy judges are constantly called upon to decide the effect of bankruptcy on the overburdened consumer: will certain of his debts survive bankruptcy and plague him after the case is closed? What property will he be permitted to keep as exempt, what will have to be surrendered to creditors? What property is subject to a lien of a creditor? Will the debtor be granted his discharge at all? The issues bankruptcy judges decide are important, both personally and financially, to thousands of debtors and creditors. They are real legal

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[64] See Table 3.

[65] Id.

[66] Id.

TABLE 3

U.S. District Courts
Filings, by Chapter of the Bankruptcy Code
During the Twelve Month Periods Ended
June 30, 1979 through 1986

Year	Total	Chapter		
		7	11	13
1979 ACT	226,476	183,259	3,774	39,442
1980 Code	210,364	157,743	4,473	48,143
1981 Code	360,329	265,718	7,827	86,778
1982 Code	367,866	255,095	14,058	98,705
1983 Code	374,734	251,319	21,206	102,201
1984 Code	344,375	232,778	20,023	91,460
1985 Code	364,536	244,647	21,420	98,452
1986 Code	477,856	332,675	24,442	120,726

Source: 1986 Annual Report of the Director, Administrative Office of the United States Courts.

Note: For purposes of uniformity, case filings in 1979 are reported under the new Chapters provided by the Bankruptcy Reform Act, i.e., Chapters X, XI, and XII under the Act are shown in the aggregate under Chapter 11. The figures shown in 1980 are for nine months only and reflect activity only under the new Bankruptcy Code (effective October 1, 1979).

> issues, that, in the absence of bankruptcy, would have been decided by either a Federal district or a State court.[67]

In short, bankruptcy judges are responsible for some of the most complex cases which present the most vexing social and economic problems of the current generation, and their decisions affect not only debtors and creditors, but the society at large.[68] The Judicial Conference of the United States recognizes the fundamental contributions of bankruptcy judges and the importance of these courts. In developing its 1985 budget estimates, the Conference observed: "More persons are directly affected by the actions of the federal bankruptcy courts than by all of the other federal courts combined."[69] Thus, bankruptcy judges are judicial officers in every sense, quite "unlike the referee contemplated in the 1898 Act."[70] Accordingly, their compensation should reflect their enhanced status in and unparalleled contribution to our federal court system.

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[67] House Report at 5972 (notes omitted.)

[68] Remarks of the Honorable Ralph H. Kelley, United States Bankruptcy Judge for the Eastern District of Tennessee, October 24, 1986.

[69] Budget Estimates for Fiscal Year 1985 as submitted to the Budget Committee of the Judicial Conference of the United States, p. 10.5 (1984).

[70] House Report at 5972.

IV. PROFILE OF THE MODERN BANKRUPTCY JUDGE

In Volume I of this Report there is contained a profile of the individuals serving as federal judges.[71] That profile sketches out an image of the modern federal judge, and seeks to dispel any romantic or lingering notions of the judge as a financially secure, senior-aged person without family responsibilities. By way of survey, we have developed a similar profile of the modern bankruptcy judge.[72] This profile demonstrates that bankruptcy judges, like their Article III counterparts, are not "older persons who assume judicial posts at the conclusion of their careers, but are rather, middle-aged, highly trained professionals in the prime of their lives."[73] In our survey of the 232 bankruptcy judges we discovered the following facts:

- The average age of bankruptcy judges is 42 at the time of appointment; 40% of all bankruptcy judges responding to our survey were appointed while in their 30's; and 50% were appointed between the ages of 40 and 55.

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[71] See Volume I, pp. 38-41.

[72] In conjunction with the National Conference of Bankruptcy Judges, we distributed a detailed survey to all 232 sitting bankruptcy judges requesting biographical, financial and lifestyle data. Fifty-six percent of the judges surveyed responded, many providing poignant comments regarding their current financial situation.

[73] See Volume I, p. 40.

° The median length of time between graduation from law school and appointment to the bankruptcy bench is 14 years.

° Fifty-two percent of bankruptcy judges have primary and secondary school-aged children; 16% have one or more children in college. Thus, just like other federal judicial officers, bankruptcy judges will face college tuition costs for their children while still in their prime.

° Three-quarters of bankruptcy judges left private law firm practice before going on the bench.

° Fifty-one percent of bankruptcy judges have sold previously acquired real or personal property in order "to make ends meet".

° Forty-seven percent of bankruptcy judges have borrowed money to pay living expenses since ascending to the bench. Of that number, 67% reported that they borrowed money from a lend-

ing institution which regularly appears before them in court.[74]

- Sixty-eight percent of bankruptcy judges have reduced or eliminated altogether their contributions to charitable, educational, or religious organizations.

- Sixty percent have withdrawn from professional organizations while 42% have discontinued continuing legal education courses.

This information suggests that bankruptcy judges are young to middle-aged, well-trained professionals approaching the peak of their private careers when they assume a judgeship. Because

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[74] A well-respected bankruptcy judge has commented on this phenomenon:

> When a bankruptcy judge is required to borrow from lending institutions, the judge must approach entities which, due to the nature of their business, appear with some frequency before that judge. A judge who must be dependent on outside income from rental, interest, or other investment income is in the same predicament. An obvious danger of this situation is that the judge's reliance on outside income sources could create both the appearance and the possibility of improper influence.

Paine, G., "Bankruptcy Judges' Salaries -- Who Should Care?", American Bankruptcy Institute Newsletter, pp. 1, 13 (Summer 1985) [hereinafter "ABI Newsletter"].

so many of them come from private law firms, it is virtually impossible to predict the precise level of financial sacrifice they make by becoming judges. In addition to their spouses, bankruptcy judges have children who, while proud and appreciative of their parents' status as federal judicial officers, are nevertheless coming of age when they begin to participate in activities and make decisions that impact heavily on the family budget.

But beyond the personal facts of their lives, bankruptcy judges are aware of the pay scales in private law firms where remuneration is high and grows higher every year.[75] Many of them are constantly being invited to leave their judicial posts to join law firms where they can earn twice or even several times more than their government draw.[76] This temptation, coupled with the twin facts that they are both the lowest paid top government officials and may not have job security beyond the end of their fourteen-year term, causes instability in our federal bankruptcy system and damage to its orderly processes that can never fully be repaired.

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[75] See Volume II, Appendix 3, pp. 6-13.

[76] See text accompanying note 85.

V. EFFECT OF INADEQUATE COMPENSATION ON THE BANKRUPTCY BENCH

A. The Traditional Problems of Recruitment, Retention and Morale Apply with Equal Force to the Bankruptcy Court

We observe in Volume I that "[t]he failure to compensate federal judges adequately contributes to the weakening of our judicial system in three principal ways: recruitment, retention, and morale."[77] The Report then sets forth in fair detail the experiences of those in government responsible for recruitment of judges, the unprecedented number of resignations from the federal bench, and the debilitating effects that inadequate salary has on sitting judges. These considerations are certainly no less compelling for bankruptcy judges. They have been subject to the same skyrocketing cost of living as other top government officers. Of all federal judicial officers, they are the lowest paid, and a higher percentage of their purchasing power has been lost since 1969 compared to other officers within the judicial branch.[78] Because they are specialists, available positions are usually filled by those in private bankruptcy law practice whose income grows markedly every year.

Yet, every year high ranking government officials set about the task of trying to recruit exceptionally bright and able

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[77] See Volume I, p. 45.

[78] See note 24 and accompanying text; see also Volume II, Appendix 3, Table 1.

lawyers to become judges. They have discovered that the low level of compensation accorded bankruptcy judges and the dim prospect of financial relief make the recruitment job harder and more frustrating than it reasonably ought to be.[79] Thus, the Bankruptcy Commission's observation that "[t]he relationship between the compensation provided and the quality of personnel who can be attracted to any position is well . . . acknowledged . . . "[80] is an axiom validated by official experience.

Further, the morale of any single group of workers is affected by numerous factors, of which financial compensation is perhaps only the most obvious. But the survey results do show (1) the high level of frustration that bankruptcy judges have with the government's salary structure and (2) the extent to which an appropriate salary level can help to stabilize the bankruptcy bench. In regard to these points, premature resignations and retirements from the bankruptcy bench are higher than those for any other federal judicial office. As of October 1, 1986, a total of 163 bankruptcy judges had left the bench within the last seven years.[81] This number represents a turnover rate among judges on the bankruptcy court of more than 70%. For most of those judges who left the bench, the financial sacrifice

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[79] See Volume I, pp. 45-47.

[80] Bankruptcy Commission Report, p. 95.

[81] Source: Administrative Office of the United States Courts, Bankruptcy Division, Washington D.C.

required by public service was too great and the incentives to remain were too elusive or invisible.

B. Record Resignations Occur on the Bankruptcy Court Because Family Economic Circumstances and Private Law Firm Opportunities are Combined Pressures that Outweigh the Advantages of Service on the Bankruptcy Court

1. Sacrifice of Family Goals

When bankruptcy judges go to the bench they do so fully cognizant of the fact that they will have to make some financial sacrifices in order to serve the public interest. The results of our survey demonstrate that after serving a few years on the bench, bankruptcy judges begin to feel that their decision to accept the call of public service requires a financial sacrifice totally out of proportion to the psychic and social rewards of the federal bench. In terms too clear to misapprehend, the judges state that the quality of life they can provide for their families has been diminished since going on the bench and their children's future is being threatened by their continued service.

This latter fact is the one sacrifice bankruptcy judges have been most unwilling to make. As many as 19% of the judges surveyed reported that they were unable to pay for their children to go to college. For others, the funds for tuition have come at great personal sacrifice. One judge reported, "My oldest child enters college this fall. In order to pay for her education I

sold the side yard to our house." One distinguished former bankruptcy judge wrote:

> [I] resign[ed] from the [bankruptcy] court in early September of 1984[.] It was not a political statement on my part. It was purely a matter of economics. My oldest son had already had to withdraw from an out-of-state private university at the end of his freshman year, and transfer to an in-state public university. On a bankruptcy judge's salary, I simply could not afford to pay his tuition, room and board at an out-of-state private university. My two younger children also could not look forward to attending private universities of their choice.
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> * * *
>
> I resigned from the bankruptcy court with the deepest sense of loss. No professional opportunity had been as satisfying nor as challenging. If I could only have afforded to stay on the court, I would in all probability have served for life.[82]

This sentiment is expressed repeatedly in the comment portion of the survey forms. One judge summed up the frustration felt by most survey participants:

> While I have never had a job I've enjoyed more and found more intellectually stimulating, I cannot punish my wife and kids by staying on the bench when I can accept some of the offers made to me and let them have the lifestyle I would like for them to have.

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[82] Letter from the Honorable Stanley B. Bernstein to the Honorable Ralph H. Kelley, October 29, 1986.

2. Impact of the Knowledge of Private Bar Earnings

The comparative salary data set forth in Appendix 3 of Volume II of this Report indicate the relatively modest position of judges when compared to private sector lawyers and academicians. Bankruptcy judges are acutely aware of the disparity in their incomes and those of private lawyers, and, in some instances, judges on the state courts.[83] They know this through a variety of ways. First, many of them come from private commercial firms where their remuneration was high and could be expected to escalate. Second, they have peers at private commercial firms. In fact, 88% of the judges surveyed reported that their salary was either "less or substantially less" than the salaries paid to their peers in private practice. Third, some of their law clerks can now finish a one or two year clerkship, go to law firms, and start their first year of actual law practice with a salary higher than the judges for whom they clerked.[84]

Finally, judges are made painfully aware of their sacrifice through law firms who attempt to recruit them as partners, Of Counsel or other senior level positions. An alarming 55% of the bankruptcy judges reported that they have been contacted about leaving the bench and returning to the private

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[83] See Volume II, Appendix 3, pp. 6-13, 18-23.

[84] See Volume I, p. 44.

sector.[85] The average judge who had been contacted received a minimum of four propositions. When salary was discussed, the median salary offered was $125,000 -- almost twice the current salary.

The reported reasons for leaving the bench are overwhelmingly financial. Of those judges who resigned or retired from the bench, 79% stated that their decision to leave the bench was either "wholly or partially" motivated by financial considerations. Ninety-four percent resumed private practice on a full-time basis after they shed their judicial robes, and that same percentage reported that they had increased their incomes by returning to the private sector. Forty percent of the judges responding reported that they left the bench for a salary in excess of $100,000. Approximately 10% resumed private practice

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[85] The question of whether this practice constitutes an actual conflict or only the appearance of impropriety is beyond the scope of our analysis, but it has been commented on by thoughtful observers:

> While it is a sad commentary on the system that so many judges who remain [on the bench] are considering a return to private practice, the low salary level creates a situation which allows law firms to take advantage of this dissatisfaction.... Furthermore, when a judge is in an unsatisfactory economic position, these offers, although attractive and oftentimes welcome, are awkward and necessarily give rise to an improper appearance, since firms looking for such expertise generally have a considerable practice before that judge.

ABI Newsletter, p. 13.

with salaries of over $200,000. In the years since leaving the bench, private sector salaries for former bankruptcy judges have continued to grow. Almost half are currently making between $100,000 and $200,000, and more than a quarter are now receiving salaries greater than $200,000.

With offers such as these at a time when 53% of the judges surveyed stated that they have considered leaving the bench for financial reasons, it is a testament to the dedication of our bankruptcy judges that no more than have already done so have left the bench. But the large and growing gap between private sector and federal salaries will continue to erode morale on the bankruptcy bench and lure more and more experienced jurists away from federal service. As one sitting bankruptcy judge has stated, "Public service is one thing--public financial embarrassment is quite another."

This trend of premature resignations and early retirements chiefly for financial reasons cannot continue. We thus endorse entirely the following view as expressed by the British Review Body on Top Salaries:

> [T]he range of posts with which we have to deal includes, by any reasonable standard, some of the most onerous in the country, and all these posts of their nature demand high levels of ability. If the nation is to be well served in these areas, then the need to offer adequate salary opportunities at the top must be faced. Of course, if the salaries for these jobs are unduly depressed, disaster will not occur overnight, but the quality of service will increasingly be placed at risk and in time the effects will show, when it may prove too late to resort to any readily available remedy: problems of

'catching up' are liable to be compounded. We understand that there is a natural temptation for Government, faced with recommendations that result in significant percentage increases, to delay or phase them, but we believe that a satisfactory pay award for these groups will pay dividends in terms of motivation, morale and manning; and is vital in the long term for the national interest.[44]

[44] Review Body on Top Salaries, Eighth Report on Top Salaries (Report No. 22), Volume I, p. 48, ¶ 140 (July 1985).

VI. CONCLUSION

Bankruptcy judges are not immune from the inflation that has so severely cut the salaries of top government officials.[87] Increasingly, bankruptcy judges are resigning or retiring from the bench prematurely. They are being recruited by law firms who understand and appreciate their value as superb legal technicians with an insight that only a federal judgeship could provide. These federal officers, like others on whom we focused in Volumes I and II, have too long sacrificed beyond what our society should reasonably expect of them. Their personal financial well-being has suffered measurably; and their families have been required to compromise personal goals because of inadequate compensation. And when they leave the bench before the end of their term, or decline re-appointment because of salary, our federal court system sustains damage, though not always obvious, which will surely reveal itself in time and may then be irreparable. It is time for such sacrifices to end and to restore to our top level officials a modicum of financial security, and to our court system a measure of stability. The 1986 Interim Commission on Executive, Legislative and Judicial Salaries should take, indeed, must seize, this opportunity to remind the country that public service is a noble calling, and it must never be reserved exclusively for the independently wealthy and persons

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[87] See Volume I, pp. 25-26.

without familial obligations. The best and only way to achieve this goal is to give our public servants their due.

Respectfully submitted,

Kaye, Scholer, Fierman,
Hays & Handler

By: Kenneth R. Feinberg

Kenneth R. Feinberg
Robert L. Mallett
1575 Eye Street, N.W.
Suite 1150
Washington, D.C. 20005

Exhibit 6

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

February 19, 1987

TO : The Honorable Gordon Humphrey
Attention: Heather Peters

FROM : Sharon S. Gressle
Intergovernmental Relations Section
Covernment Division

SUBJECT : Salaries of Bankruptcy Judges, Special Trial Judges of the U.S. Tax Court, and U.S. Attorneys

In response to your inquiry on the new salary rates for Bankruptcy Judges, Special Trial Judges of the U.S. Tax Court,and U.S. Attorneys, I have prepared the following memorandum. You will find a comparison of the Bankruptcy Judges's salaries with those of the Judges of the U. S. District Courts for selected years since 1975, a comparison of the salaries of Bankruptcy Judges with those of the U.S. Attorneys, and a discussion of the current problems related to the salaries of the Special Trial Judges of the U.S. Tax Court.

The information was collected through a search of the reports of the Fiscal 1977, 1981, 1985, and 1987 Commissions on Executive, Legislative, and Judicial Salaries, as well as the subsequent Presidential messages to Congress containing the salary recommendations which Congress was to consider. Another source document was the House Post Office and Civil Service Committee Print, "Current Salaries Schedules of Federal Officers and Employees Together with a History of Salary and Retirement Annuity Adjustments" (Committee Print 99-1, February 15, 1985; historical tables). In addition, I have spoken with Mr. William R.Birchell, Jr., General Counsel, Administrative Offices of the U.S. Courts and Mr. Paul Nejelski of the Administrative Office of the U.S. Tax Court.

Relationship Between Salaries:Bankruptcy Judges and U.S. District Courts Judges

When the pay recommendations of the President go into effect in March, the salaries of Bankruptcy Judges will be approximately 81 percent of those of

the Judges of the U.S. District Courts. For several years this relationship has ranged from 86 to almost 92 percent.

TABLE 1. Relationships Between Salaries of Bankruptcy Judges and Judges of the U.S. District Courts.

Year	Bankruptcy Judges	District Judges	Percentage of District Judges' Salaries
1975	$37,800	$42,000	90.0%
1977	48,500	54,500	88.9
1980	50,000	54,500	91.7
1985	68,400	78,700	86.9
Jan. 1987	70,500	81,100	86.9
Mar. 1987	72,500	89,500	81.0

Sources: Reports of the Commission on Executive, Legislative, and Judicial Salaries (1976, 1980, 1985, and 1986), and subsequent Presidential messages.

CRS is unable to find any written justification for the increased differential between the salary of the Bankruptcy and District Court Judges. When the Commission on Executive, Legislative and Judicial Salaries made their recommendations to the President in Dec. 1986, they recommended that the Bankruptcy Judges be paid at a rate which would have been 92.3 percent of the salary rate for the District Judges. When President Reagan submitted his recommendations as part of his Jan. 5, 1987 Budget Message, he lowered all of the Commission's proposed pay increases and increased differential between these two groups.

Mr. Burchill, General Counsel, Administrative Offices of the U.S. Courts, said that historically the relationship has been recognized at around 90 percent. Burchill said that he has not been able to determine why there was this dramatic change. According to Mr. Burchill, the Judicial Conference has argued that the rates for the Bankruptcy Judges are too low in relation to the District Court Judges. He said that the Conference may ask for Congressional action to reestablish rates somewhat closer to the 90 percent relationship.

Bankruptcy Judges and U.S. Attorneys

You also indicated an interest in the relationship between the salaries of

the Bankruptcy Judges and those of the U.S. Attorneys who would be arguing cases before the court.

Under the provisions of P.L. 98-473 (Title II, Sect. 1701(a); Oct. 12, 1984; 98 Stat. 2184) the Attorney General has the authority to fix the salaries of the U.S. Attorneys. These salaries cannot exceed the basit rate of compensation for positions at Level IV of the Executive Schedule. According to Mr. Glen Stafford, Executive Office for United States Attorneys, U.S. Department of Justice, Attorney General Edwin Meese has determined that all U.S. Attorneys are to be paid at a rate equal to ES-5 (the second lowest rate paid to members of the Senior Executive Service). The ES-5 rate is $75,500. The only exceptions to this are the U.S. Attorneys in New York City, Washington, and Los Angeles who are currently paid at the rate for Level IV of the Executive Schedule. According to Mr. Stafford, when the incumbents leave those offices, the new U.S. Attorneys will be paid at the ES-5 rate.

Table 2. Salaries of Bankruptcy Judges and U.S. Attorneys

Year	U.S. Attorneys Salary Range	Bankruptcy Judges Salaries
1976	$29,000 - $39,900	$37,800
1980	$47,800 - $52,750	$50,000
1984	$66,400 - $69,900	$68,700
Mar. 1987	$75,500 - $77,500	$72,500

Sources: Policy and Supporting Positions. 1976 [House Committee on Post Office and Civil Service, Committee Print, 94th Cong., 2d Sess., Nov. 8, 1976]; 1980 [House Committee on Post Office and Civil Service, Committee Print, 96th Cong. 2d Sess., Nov. 18, 1980]; and 1984 [Senate Committee on Governmental Affairs, Committee Print 98-286, 98th Cong. 2d Sess., Dec. 31, 1984].

Special Trial Judges, U.S. Tax Court

You also asked about the apparent error in the President's recommendations for salaries of the Special Trial Judges of the U.S. Tax Court. (The Tax Court is administered independently of the Administrative Office of the U.S. Courts.) The Special Trial Judges have never been included in the recommendations of the Commission on Executive, Legislative, and Judicial Salaries. Special Trial Judges were, however, for some unexplained reason, included in the President's 1987 pay recommendations to the Congress.

According to Mr. Paul Nejelski, Administrative Office of the U.S. Tax Court, the Special Trial Judges of the Tax Court are paid at a rate equal to 90 percent of the salary rate for the Judges of the U.S. Tax Court. The Judges of the U.S. Tax Court are paid at a rate equal to that paid to the Judges of the U.S. District Courts. (The District Court Judges are specifically included, under statute, as a group of positions to be covered by the Commission on Salaries.) As of Jan. 1, 1987 the Special Trial Judges' salary was increased to $72,990 (90 percent of the $81,100 rate for District Court Judges). The President's recommendations included a rate of $72,500 for Special Trial Judges. Their inclusion in his recommendations at this rate presents two problems: 1) the $72,500 falls short of the 90 percent requirement and 2) the $72,500 represents a decrease in salary from that already in effect as of Jan. 1, 1987.

According to Mr. Nejelski, the Office of Management and Budget was informed of the error and letters acknowledging the problem were sent from the Office of Management and Budget to the Chairmen of the personnel oversight committees in the House and Senate. Nejelski said that the working assumption seems to be that, since the Special Trail Judges were included in the President's recommendations in error, the recommendations for their salary rates does not carry the force of law. The rate which will go into effect Mar. 1, 1987 will be $80,550 (90 percent of the $89,500 rate paid District Court Judges).

Senator Thurmond's Question

You mention in your prepared statement that the retirement system proposed in S. 1630 will encourage senior judges to serve from time to time after retirement. Could you expand on this statement and explain the cost advantages of this provision in the bill?

Judge Kelley's Response

The proposed legislation will encourage bankruptcy judges to remain on the bench after they complete their first term of office, and will also save money when bankruptcy judges who have retired on an annuity are recalled into active service as "senior judges".

The proposed legislation grants bankruptcy judges retirement on full salary upon reaching age 65 after having served a full fourteen year term of office. Given bankruptcy judges average 45 years of age at the time of their initial appointment, it is expected they would stay on the bench for a 14 year term at which time their full salary retirement benefit would be completely vested. At this point these individuals would be an average of 59 to 60 years of age. Because the amount of the annuity is based on the salary at the time of retirement, it is expected these individuals would seek reappointment and serve for at least an additional five to six years to receive the full amount of the salary of a bankruptcy judge as an annuity at the time they first become immediately eligible to receive the annuity(65 years old),barring disability.

We believe this legislation will also create a cadre of "senior" judges in bankruptcy who would be willing to serve at a substantial cost savings to the government over the present system by which recalled bankruptcy judge annuitants are paid. Currently when bankruptcy judges retire on an annuity they may be recalled into active service upon their consent and receive the salary of an active sitting bankruptcy judge, presuming they are willing to work full time. If they are willing to be recalled full time their compensation, therefore, consists of the payment of their annuity plus the difference of the salary of an active judge and the amount of their annuity. When bankruptcy judges are recalled under this scenario, the Federal judiciary must not only pay the difference or salary portion to the judge, it must also reimburse the Office of Personnel Management for the annuity portion paid as well. The new legislation will eliminate the need for these payments as the bankruptcy judge will already be receiving an annuity equal to the full time salary of the bankruptcy judge. Also, under the proposed legislation, bankruptcy judges who have retired and are receiving an annuity may be recalled and work regularly, as senior district judges do, but not necessarily full time and still receive their annuity. As the present law contemplates that only "full salary" can be earned if the judge is working full time, many retired judges are discouraged from considering the recall program. However, under the proposal, judges would suffer no financial penalty if they wished to work three or four days a week as senior bankruptcy judges, and the judiciary would have the benefit of their serivces at no additional cost to the government. Through the expanded utilization of recalled bankruptcy judges at no additional cost to the government we may also avoid having to request that Congress authorize new bankruptcy judge positions as the current workload has required additional judicial manpower.

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November 19, 1987

The Honorable Howell Heflin
Subcommittee on Courts and
Administrative Practice
Washington, D.C. 20510

Dear Senator Heflin:

I am writing this letter as the Chairman of and on behalf of the American Bankruptcy Institute. Our membership consists of over 2,100 persons involved in the bankruptcy process, including members of the judiciary, the legal profession, and the credit community. While your committee is considering S. 1630, the country is faced with a record setting deficit and substantial turbulence of the stock market. It is just such a time that we are also reminded of the role the bankruptcy courts play in the economic fabric of this country and the need for well-qualified, experienced jurists in this specialized court.

Not only is this legislation critically necessary to recruit and retain experienced specialists, but it is also long overdue from an equitable standpoint. At this time there is no retirement program adequate to keep our judges on the bench. Those recently appointed to the bench have the same retirement benefits of young persons joining the federal government anticipating a long-term career.

We need a program designed to attract experienced lawyers who are generally in their late 40s or 50s to remain on the bench throughout the remaining 14 years of their career. This would allow them to leave practice at a time of maximum experience with the knowledge that they would receive some security after 65 and cap off a career with distinguished service in the judiciary.

The American Bankruptcy Institute is in a unique position because of its involvement in the bankruptcy process. ABI

sees the harm which results from inexperienced lawyers going on the bench and immediately handling cases involving millions of dollars and hundreds or thousands of employees of distressed companies. We find more and more that once these younger judges obtain a level of competence we would like to have on the bench, they are attracted away by private law firms.

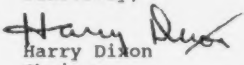
The American Bankruptcy Institute firmly believes that S. 1630, as written, will provide a retirement program, attractive enough to entice experienced lawyers to the bench and keep them there until their retirement. Further, it will allow them to provide an extremely valuable service after that time in the system as a senior bankruptcy judge.

A full discussion of the need for this legislation was embodied in the testimony of ABI member, Judge Ralph Kelly, who testified before your committee on October 28, 1987.

The American Bankruptcy Institute urges you to quickly mark up S. 1630.

Thank you for your consideration of this extremely important piece of legislation to the bankruptcy system.

Sincerely,



Harry Dixon
Chairman,
American Bankruptcy Institute

Senator HEFLIN. Thank you. Judge Schlesinger, we would be delighted to hear from you now.

STATEMENT OF JUDGE HARVEY E. SCHLESINGER

Judge SCHLESINGER. Thank you, Mr. Chairman.

With me today—and I am sure they were here the last few hearings, so you probably remember John Roper from Biloxi, MS, who is the immediate past president of the National Council; Bob Carr, who is one of Senator Thurmond's former staffers, from Charleston, 2 years before; and John Godich, who is the incoming president.

We appreciate the opportunity to speak with you today on this important matter. I think that Judge Skopil hit it on the head when he started out by saying the way that the system started out in 1968 is not the way the system is today, with respect to magistrates. And with the 1976 and 1979 jurisdiction changes, we virtually have a system where, with the consent of the parties and the delegation from a district judge, a U.S. magistrate is the trial judge in the civil matter, and with respect to misdemeanor criminal cases, the trial judge in those cases.

Part of the experiment that commenced and is still ongoing was an attempt to reduce the number of article III judges that were needed to handle the Federal judicial system and the increased number of cases that we are constantly being bombarded with.

But over the last 20 years, I think the experiment has shown not only that it can work in most respects, but it had one or two shortcomings. And the biggest shortcoming that we are faced with now is the remuneration.

To put it in a different term, I think that the big object of all courts is to terminate cases, and the faster you can terminate cases, the more efficient the court becomes. But you have got to have high-caliber, highly qualified individuals that dispense justice who don't just work in a mechanistic manner to close cases. The faster the case gets closed, the more productivity and efficiency the court can show.

With a revolving door, we have judges that come on the bench, bankruptcy judges and magistrates, that stay for several years and then leave, and we all know it takes 3 or more years to at least get a grasp for the job and understand what it entails. And the more resignations that we have and replacements that we must go through, the less efficient the court system becomes.

Senator Thurmond asked at the outset whether the Federal Government should compete with private enterprise. Of course the answer is no, and it never should be that. But I think in addition to the members of the judiciary that are in this room and those on this side of the table, the same applies to you as members of the Senate, and also to your staffers. It is more than just remuneration. It is dedication and it is service that we want to provide. But with the devastating inflation and cost-of-living increases that have taken place over the last few years, there comes a limit as to how much a public servant can actually sacrifice. You want to provide for your family, but you don't have to provide at the level that people in private practice do, and we don't ask that that is what should be met.

But we have to stop the revolving door and not only attract highly qualified, capable individuals. I believe within the ranks of magistrates, because of the jurisdiction that we have, there should be no difference in the type of individual that is attracted to serve in the Federal judiciary in the U.S. district court or the bankruptcy court—any different from an article III district judge or a bankruptcy judge or a magistrate. They should all be of the same caliber because they are all dealing with the same type of work.

We need to reassess what is needed to keep those who are on the bench here and how to attract those highly qualified individuals that we will need, and I believe that this particular bill will do that.

It must be remembered that because of the Code of Judicial Conduct, members of the Federal judiciary are very, very limited in what they can do with respect to outside income. Basically, it is teach part-time or do some writing, and that is about it. Writing takes so much time away that you just can't do it, and other than a few dollars that you might be able to earn teaching on the side, there is no way to earn any outside income.

In order to keep the experienced judiciary that we have and attract those that you want in the future at that high level, we believe that this is something that is needed to build a financial platform on the system that has been in existence—it will be 20 years next year—and keep it going so we can provide assistance to the district judges and thereby reduce whatever cost it would be in providing additional judicial officers in the future.

I would also ask that the written statement that we prepared be made part of the record, and I will be glad to answer any questions after we finish with our statements.

[The prepared statement of Judge Schlesinger follows:]

PREPARED STATEMENT

OF

HONORABLE HARVEY E. SCHLESINGER
UNITED STATES MAGISTRATE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

AND

PRESIDENT, NATIONAL COUNCIL OF UNITED STATES MAGISTRATES

ON BEHALF OF THE

NATIONAL COUNCIL OF UNITED STATES MAGISTRATES

SUMMARY OF PREPARED STATEMENT ON BEHALF OF THE NATIONAL COUNCIL OF UNITED STATES MAGISTRATES ON RETIREMENT AND SURVIVORS ANNUITIES FOR BANKRUPTCY JUDGES AND UNITED STATES MAGISTRATES

S. 1630

In recent years the roles and responsibilities of ancillary federal judicial officers has changed through an expansion of their authority. Recruitment for these judicial officers of individuals who are at the peak of their legal experience and earnings is difficult under present retirement programs because their age often precludes the attainment of sufficient years of government service to earn significant retirement benefits. In addition, in many cases these judicial officers, having gained the training and seasoning which makes them fully productive, are lured away from the bench by the monetary rewards of private or corporate practice which brings them and their families financial security.

This legislation, S. 1630, provides for a new retirement system and survivors annuities for United States Magistrates and Bankruptcy Judges based on the plan already in existence for Territorial Judges. It would correct the current inequity in the benefits for these highly qualified judicial officers and go a long way in insuring the ability to attract and retain them.

* * *

A highly qualified judiciary is necessary to meet the steady growth of litigation in our federal system. Thus, the issue is what will it take to guarantee the attraction and retention of these high caliber individuals?

This statement is submitted by the National Council of United States Magistrates in support of S. 1630 and H.R. 2586 to improve the retirement system for United States Magistrates and Bankruptcy Judges, fixed-term judicial officers of the U. S. District Courts. The National Council of United States Magistrates is a private non-profit organization whose members consist of Magistrates currently serving in the United States District Courts throughout our country. The Council exists to serve the needs of its membership with a particular interest in maintaining and increasing the professional competence of United States Magistrates. The Council works in close cooperation with the Judicial Conference of the United States and the Administrative Office of the United States Courts.

I. PROFILE OF MAGISTRATES

As a preliminary matter, we believe it is important to emphasize just who and what United States Magistrates are. The caliber and achievements of sitting Magistrates as well as the demonstrated likelihood of continued high caliber, experienced applicants for Magistrate vacancies is quite relevant to a consideration of an appropriate retirement system.

Magistrates are judicial officers of the United States District Courts. A full-time Magistrate is appointed for a term of eight years. The office was established by the Federal Magistrates Act of 1968 and was built on the foundation of the former United States Commissioner system. Commissioners had been authorized to try petty offense cases arising on federal property, to issue search and arrest warrants, to set bail, and to conduct other initial appearances and preliminary hearings in criminal cases. The Federal Magistrates Act created a new position that would assume all the duties of the former

commissioners and also be authorized to assume a wide range of judicial duties to assist district judges who are overburdened and backlogged in the disposition of the growing caseloads in United States District Courts.

A "two-year study" of the United States Magistrates system by the Judicial Conference of the United States, was mandated by Congress in the Federal Magistrates Act of 1979 (P.L. 96-82, Oct. 10, 1979). The study is entitled "Report of the Judicial Conference of the United States to the Congress on the Federal Magistrate System," dated December 1981.

On page 10, the Judicial Conference report states: "United States Magistrates were established by the Congress as an integral part of the United States District Courts. The jurisdiction which a Magistrate exercises is that of the District Court itself ...." On page 15, the report continues: "The jurisdiction of magistrates to try civil cases extends to all cases pending in the District Court."

On page 42, the Judicial Conference said:

> The jurisdiction of magistrates flows exclusively from that of the district courts and is co-extensive, upon delegation, with that of the district courts. Judges and magistrates commonly work on the same cases, and the duties that magistrates perform dovetail with the work of the judges ....
>
> ... Magistrates try civil cases that the judges would otherwise try in the absence of consent of the parties .... Magistrates are essentially a supplemental resource for each district court, and one of the primary benefits of the magistrates system as presently constituted is that it gives each court maximum flexibility to divide up the total work of the court in a sophisticated and efficient manner among the judges and magistrates to best meet local needs and changing conditions.

The report to the Congress by the Comptroller General of the United States dated July 8, 1983, entitled "Potential Benefits of Federal Magistrates System Can Be Better Realized," after an extensive investigation in 11 representative districts, included the following findings, summarized on page i:

> Magistrates are subordinate district court officials empowered to perform many of the duties previously performed only by district judges. The magistrates have made a substantial contribution to the movement of cases in Federal districts courts which is demonstrated by the dramatic increase in district court production--368 civil cases terminated per judge for the year ended June 30, 1982, compared to only 201 for the year ended June 30, 1970.

Although this new system has been fully implemented for less than 17 years, 20 United States Magistrates have become United States District Judges and two have become United States Circuit Judges. One nomination for a circuit judgeship and one nomination for a district judgeship are currently pending before the Senate. Four have become state supreme court justices. One current full-time Magistrate is a former dean of a law school and two are former state supreme court justices. The Chairman of the Judicial Administration Division of the American Bar Association whose term ended in 1981 was a federal Magistrate and has since, along with a second Magistrate, been appointed by the President as Judges of the United States Claims Court. The President has recently nominated a United States Magistrate as a Judge on the Superior Court of the District of Columbia. The current Chairman of the American Bar Association's National Conference of Special Court Judges is a United States Magistrate.

As a result of the 1979 amendments to the Magistrates Act, a Magistrate must have been for at least five years a member in good standing of the bar of the highest court of a state and must have been engaged in the active practice of law for a period of at least five years. The overwhelming majority of Magistrates currently in office substantially exceed the minimum statutory requirements for bar membership. In addition, vacancies for Magistrate positions must be publicly advertised and applicants examined by a citizen merit selection panel which includes both lawyers and lay persons. This merit selection panel then submits a final list of "those five individuals whom it deems most qualified among the applicants...." District courts may select

as Magistrates only those candidates screened, approved, and included in this final list by such merit selection panels.

II. JURISIDICTION OF MAGISTRATES

The jurisdiction which a United States Magistrate exercises is the jurisdiction of the district court itself, delegated to the Magistrate by the Judges of the court under statutory procedures.

The first major jurisdictional changes in the system came in 1976, when Congress amended the Magistrates Act to authorize a District Judge to designate a Magistrate to handle virtually any pretrial motion or matter or special master function in the district court. Under this change, Magistrates routinely handle a full range of other judicial duties, including every kind of pre-trial motion in civil and criminal cases. This includes felony cases. Even though Magistrates do not presently have felony trial jurisdiction, a routine part of their duties includes the adjudication of pretrial motions in felony cases, having the practical effect of determining guilt or innocence. See, e.g., **United States v. Raddatz**, 447 U.S. 667, **reh'g denied**, 448 U.S. 916 (1980).

The second major jurisdictional change came when, as part of the 1979 amendments to the Federal Magistrates Act (P.L. 96-82, Oct. 10, 1979), Congress expanded the trial jurisdiction of Magistrates to include any and all civil cases, whether jury or non-jury and regardless of the subject matter or amount in controversy, and any and all non-felony criminal cases, so long as the Defendant in the criminal case or the parties in the civil case consent to the Magistrate's jurisdiction. In these civil cases any appealable judgment or Order entered by a Magistrate goes directly to the Circuit Court of Appeal. Thus, as of October 1979, with consent of the parties, jurisdiction of Magistrates under these procedures has been literally and precisely the same as that of United States District Judges. This jurisidiction is regularly exercised by Magistrates.

Magistrates regularly review findings and rulings of state courts, including state supreme courts in habeas corpus cases. They also review findings and rulings of Executive Branch Officers such as the Secretary of Health and Human Services in Social Security Disability cases. In addition, they conduct evidentiary hearings when state prisoners challenge the conditions of their confinement.

In summary, a Magistrate's duties generally fall into six broad categories:

1. Initial proceedings in criminal cases.

2. Trial of misdemeanors, upon the defendant's consent.

3. Conduct of pretrial proceedings in civil and criminal cases.

4. Trial of civil cases, upon the parties consent.

5. Postconviction relief, and Conditions of Confinement of prisoners.

6. Judicial review of Administrative Agency decisions.

In addition to handling the six specified categories of judicial duties above, a Magistrate by statute may be assigned any "additional duties as are not inconsistent with the Constitution and laws of the United States."

III. IMPACT ON THE DISTRICT COURTS

District Judges' caseloads have increased dramatically since Magistrates were first appointed in 1970. More judges have been needed to handle this exploding case load, and the Congress has responded by authorizing the additional judgeships that the Judicial Conference has requested. Those requests clearly would have been greater if the District Judges did not have the assistance of Magistrates. In 1970, just before the full scale appointment of Magistrates began, an omnibus judgeship bill was enacted providing for 63 additional district judgeships that were very much needed. During the year that ended June 30, 1971, the 401 authorized district judge positions had an average total caseload of 341 civil and criminal cases and terminated an

average of 315 cases. The current number of authorized district judgeships has grown to 575, and during the year ended June 30, 1987, each of these judges had an average caseload of 466 civil and criminal cases and terminated an average of 462 cases. The presence of Magistrates assisting the District Judge is the reason that the Federal District Courts have been able to cope with the rising caseloads we have experienced since 1970 and to improve their productivity so dramatically.

The United States Supreme Court on October 1, 1984, declined to review several federal circuit court opinions upholding the constitutionality of the jurisdiction of United States Magistrates to exercise the full jurisdiction of the District Court and enter judgment in any civil case upon consent of the parties. This has resulted in and is expected to result in a sharp increase of the exercise of such jurisdiction as a result of larger numbers of referrals from Distict Judges, thus, relieving these judges of their overburdening caseloads.

IV. REASON FOR IMPROVED RETIREMENT

Let me suggest a few background matters that the Members of Congress may want to have in mind when reviewing the retirement bill.

1. The average full-time Magistrate is first appointed to office in his or her early to mid-forties. That is a much later stage in life than the typical federal career employee. Many of the Magistrates come to their positions with little or no prior Government service. Thus, most Magistrates do not have the opportunity to accumulate the number of years of service that a career employee gathers. The shorter period of service results in a lesser annuity when they are both included under the same retirement system.

2. Magistrates come to office after considerable years of professional experience. The group from which the Courts are attempting to recruit new Magistrates is attorneys who are near the peak of their earnings potential in the private sector.

While the current retirement benefits of a Magistrate compares favorably with many other Government positions, it is not a an inducement to this group of candidates. It is not uncommon for these attorneys to be earning two and three times the Magistrate's annual salary and to have lucrative retirement plans. In addition, law firms provide many before-tax benefits to its members that are not available to the judiciary. The current retirement situation for Magistrates compounds the financial sacrifice of taking this judicial office. Many individuals who would be excellent candidates simply cannot make that sacrifice under current circumstances. However, an improvement in the retirement system not only would make the office attractive but insure the retention of such highly qualified individuals.

3. In light of the expanded jurisdiction of United States Magistrates and Bankruptcy Judges, the Judicial Conference of the United States at its March 1982 session recommended that the provisions of Title 28, United States Code, § 373, relating to the retirement benefits of non-Article III judges, be amended to provide for enhanced retirement benefits for United States Magistrates and Bankruptcy Judges. These judicial officers would be brought into a separate system similar to that already provided for territorial judges.

In April of this year, the Director of the Administrative Office, Ralph Mecham, sent an executive communication to the President of the Senate and the Speaker of the House, transmitting the Judicial Conference's recommendation. That recommendation has been introduced in the Senate as S. 1630 and in the House of Representatives as H.R. 2586 which now has more than 139 co-sponsors.

Improved retirement benefits remain the number one concern of United States Magistrates, and the passage of time since 1982 has heightened the urgency in achieving improvements in the retirement benefits of Magistrates. The Judicial Conference of

the United States reported to Congress in 1981 as stated before that, "Most Magistrates enter on duty at a later stage of life than the typical career federal employee, and most Magistrates do not have prior federal service to apply towards their eventual annuity." The report concludes, "[a]s a result many Magistrates do not have the opportunity to accumulate the number of years of service that a career employee gathers. The shorter period of service results in a lesser annuity." The problem is vividly seen by specific examples. A Magistrate who retires at age sixty-five (65) with fourteen (14) years of service as a Magistrate retires from a high three year salary of seventy-two thousand Five hundred ($72,500) dollars per year to an annuity of twenty-four thousand four hundred seventy-five ($24,475) dollars per year. Not only has that Magistrate sacrificed the ability to have greater earnings during those 14 years but at the end of a career has also sacrificed lucrative private retirement benefits.

The bill before the Congress is, with appropriate changes, a word for word reproduction of the law as it now pertains to the retirement of territorial judges, except with regard to the effective date, and a slight modification to conform to the term of office of Bankruptcy Judges.

The most obvious benefit to the United States from this legislation will be the enhanced ability to the judiciary to attract and retain highly qualified individuals to the position of United States Magistrate. By improving retirement system, there are benefits which would attract applicants to the office equal to those if they had remained in private practice. In addition, since no benefits would be payable until age 65 the retention of that judicial officer is almost guaranteed.

In summary, let me state without equivocation that the National Council of United States Magistrates urges the immediate passage of legislation to improve the retirement system for United States Magistrates and Bankruptcy Judges. We suggest that the real benefit to our country of any such improvement lies in

the prospective application of the improved retirement program in order to facilitate the appointment and retention of the highest qualified individuals as United States Magistrates and Bankruptcy Judges.

On behalf of the National Council of United States Magistrates, I want to express our gratitude to the Congress for its consideration of this legislation. Please be assured of our absolute support for this legislation and our desires to cooperate fully with the Congress in any way possible.

Senator HEFLIN. Judge Dilenschneider, we would be delighted to hear from you now.

STATEMENT OF JUDGE JOHN J. DILENSCHNEIDER

Judge DILENSCHNEIDER. Thank you, Senator. I appreciate your invitation to be here. I am happy that my written submission will be made a part of the record, and I appreciate your referring to me as "judge."

As you know, I am a former judge, Senator. I was a U.S. bankruptcy judge from 1967 to 1975, and I would like still to be called "Judge." I resigned because my children became of college age, and there was no way I could put them through school on a judge's pay. I pulled out my retirement, paid my bills, and, with a bonus from the law firm I joined, was able to get myself solvent again. And that is the experience that many of the members of the Association of Former Bankruptcy Judges, of which I am now the chair, have found themselves in.

Senator, I believe it is important that the Congress is looking at S. 1630 at this time. I am not an economist, but it is my opinion, after 20 years in the business of being a bankruptcy attorney and a judge, that the ripple effect of what we have seen on Wall Street in the past week is going to result in a record number of consumer and some business bankruptcy cases in the spring.

And when this wave hits, and the caseload is already high, there is going to be an even greater demand for bankruptcy lawyers. That is a very highly specialized kind of attorney, and the most convenient place to recruit these attorneys is going to be from the ranks of the bankruptcy judges.

I am the head of the 10-person bankruptcy reorganization group of Smith & Schnacke. That is a 170-person firm based in Dayton, OH, and if we need help, we will be looking—I hate to say it—at the Bankruptcy Judge Corps.

My organization, the Association of Former Bankruptcy Judges, has nearly tripled in membership over the last 4 years. We believe it is the fastest growing legal organization in the country, and we are sad to think of it that way.

It is my belief that this spring, at the precise time new judges are needed to remain on the bench, unless a vote of confidence is given to them by the Congress, they are going to be leaving.

I am here really to ask for the stability of the bankruptcy bench. There is a complete instability now. It is costly to the taxpayers because of the constant turnover in training. It is costly to business. And I just want to address those two factors and then terminate my testimony.

For the most part at this time, experienced judges are being replaced by young attorneys. Some of them are bright, but they assume their duties presiding over major cases in this country, often without any business or bankruptcy experience at all.

My good friend Judge George Paine of the Middle District of Tennessee will, I hope, forgive me when I point out that, in 1981, the two judges who were in Nashville, who were age 44 and 48, resigned. They were replaced by a judge, 35 years old, with no bankruptcy experience, and a judge, 30 years old, with only some bankruptcy experience.

Now, that trend to young judges is understandable, because young lawyers today constitute the majority of those who apply for a bankruptcy judgeship. And the reason is simple. It appeals to a younger attorney because he can put in the 30 years he has to put in to get a decent retirement or, more likely, he will build up the kind of experience that will make him attractive to a large law firm.

The bankruptcy judgeship is not attractive to a person like me. I am 55 years old. To abandon my practice for a bankruptcy judgeship under the present retirement program would just be financially irresponsible. In the time I would serve as a bankruptcy judge I couldn't build up a pension of even a third of my salary.

So it is because of the present inadequate retirement system that we can not retain bankruptcy judges with experience and we can not even recruit qualified, mature judges.

I would like to point out also, Senator, that the constant turnover on the bench leads to litigation and a consequent higher case load. This problem is already on us. Today, for example, we have very great turnover. In the four districts of Texas, which have some of the most complex cases in this country, the 12 sitting judges have an average tenure of 24 months. In the Southern District of New York in Manhattan, the average tenure of the judges is just over 4 years. In the Southern District of Ohio where I practice, the average tenure of the three judges in Columbus is about 12 months. In Dayton, it is 2 years. The seven judges sitting in Chicago have an average tenure of under 2 years.

What is important here from the standpoint of the practicing attorney and the case load is that with inexperienced judges, it is almost impossible in these districts to advise a client about the outcome of a reasonably close bankruptcy question, and there are many close questions in bankruptcy law. Because the parties can't negotiate, they have to litigate just to be responsible to their clients.

Thus, the inexperienced judges are the ones who are burdened with even more problems. They are burdened with the litigation.

Now, you may be able to calculate with some precision the cost of training new judges every year, but the cost of the extra litigation because of the high turnover of the bench I don't think can be calculated.

I think that the bill before the Senate would provide retirement benefits attractive enough to cause judges to remain and remote enough, not beginning until age 65, to keep them working until that time. And I think it's going to enable the court to recruit more mature attorneys to the bench. It will make the bankruptcy judgeship attractive to a 40- to 50-year-old person who must consider the retirement factor when changing careers.

I spoke with a number of former judges at the National Conference of Bankruptcy Judges in New Orleans last week. A number of them said that they would consider going on the bench because at this point, at age 50, their children have been raised. They could live on the bankruptcy judge's salary and the retirement would be adequate.

I'm not saying that there should be a wholesale rehiring of former judges, but I am trying to point out that should this bill become law, the pool of attorneys available for consideration for appointment to the bankruptcy bench would be considerably larger, more experienced, and once appointed, I think the judges would be likely to remain.

I've attached to my written statement the letters of former Judge Patton of Texas and former Judge Katz of California, both who indicate that they did resign precisely because of the retirement issue.

Thank you.

[Submissions for the record follow:]

PREPARED STATEMENT

OF

JOHN J. DILENSCHNEIDER
SMITH & SCHNACKE
COLUMBUS, OHIO

SUMMARY

The passage of the Magistrates and Bankruptcy Judges Retirement Bill is essential for a stable and mature bankruptcy bench. Without adequate retirement the bankruptcy court will not be able to retain its present judges or recruit new judges with maturity and experience.

A continuation of the present retirement system will turn the bankruptcy court into a training ground for young lawyers, and the consequent instability of the bench as lawyers appear for a few years experience and then resign will be costly to taxpayers and detrimental to business.

To recruit experienced attorneys in their forties and fifties, the court system must provide more than job satisfaction and present income. An attorney who gives up his practice at age 50 to 55 to serve a fourteen year term wants to be sure of an adequate retirement.

The retirement provisions in the proposed law will be an incentive to sitting judges to remain on the bench and provide an inducement to experienced attorneys to seek appointment.

* * *

I am John J. Dilenschneider, an attorney from Columbus, Ohio. I head the Bankruptcy Reorganization Group of Smith & Schnacke, a 170 person law firm based in Dayton, Ohio with offices in Columbus, Cincinnati and Orlando. From January, 1967 to July, 1975 I was a Referee in Bankruptcy and then a United States Bankruptcy Judge in the Southern District of Ohio. For the past two years I have been Chairman of the Association of

Former Bankruptcy Judges, a group of referees and judges who have retired or resigned, many of whom are in private practice in major law firms throughout the country.

I am here at the invitation of Senator Heflin to comment upon S. 1630, the Magistrates' and Bankruptcy Judges' Retirement Bill.

I do not intend to examine the details of the bill, but rather to comment on the necessity for this legislation from the viewpoint of a former judge and an attorney who practices daily in the bankruptcy court.

In 1967 when I became a Referee in Bankruptcy operating under the Bankruptcy Act of 1898 the caseload was low, few Chapter XIs were filed and the matters which came before me were mostly administrative and usually uncomplicated. There was time for learning on the job and many of us appointed under the old Act did in fact do just that.

Today, the situation is completely different. The caseload is high, Chapter 11 under the Bankruptcy Code of 1978 is frequently invoked, and the matters which can come before a bankruptcy judge may involve millions of dollars in areas such as labor, pension, environmental, securities and tax law. There is no time today to learn on the job. In fact, it is quite possible that shortly after he is appointed a new judge will have the top bankruptcy lawyers in the country appearing before him in cases concerning the largest corporations in the country. This happened to Judge Warren Bentz of Erie, Pennsylvania who only a month after his appointment drew the Wheeling Pittsburgh Steel case. Fortunately, Judge Bentz was an experienced attorney when he became a judge and was able to handle the complicated matters of labor contract which arose in the first week of the case. But a similar case in another district could just as easily have been assigned to a 31 year old appointee who never practiced bankruptcy law before becoming a judge.

As a lawyer who appears in the bankruptcy court, I

believe that the continuity and stability of the bench is an absolute necessity. It is essential for predictability of outcome which is the most important element in advising a client and in avoiding litigation. Yet because of the current demand for bankruptcy attorneys the bench has become increasingly unstable. When I went on the bench in 1967 it was almost unheard of for a Referee to resign. For example, during the five year period from June, 1970 to July, 1975 fourteen bankruptcy judges resigned over the salary issue. The great concern over such a record number of resignations prompted the amendment of Section 40a of the Bankruptcy Act. (Report 94-626, 94th Cong., 2d. Sess., Feb 3, 1976, pp. 7-8) Eight years later, when the Association of Former Bankruptcy Judges was founded we discovered that we had fifty-two members, most of whom resigned after 1975. Today, four years later, we have approximately 140 members.

A year ago, at the request of the National Conference of Bankruptcy Judges, the former judges polled their membership. Of those judges who responded, eighty percent said that financial considerations relating to salary and retirement, two sides of the same coin, were the reasons they left the bench.

E.H. Patton, Jr., was a bankruptcy judge with 11-1/2 years of service when he resigned to join a major firm in Houston, Texas. He indicated that the lack of federal retirement benefits was the direct cause of his resignation and re-entry into private practice at age 62. Because his children were through college he could, he said, live on his salary as a judge, but his retirement would be completely inadequate. He was easily able to negotiate a better retirement program as soon as he left office.

Herbert Katz, a California bankruptcy judge with eleven years of experience, resigned at age 54 to join a major Los Angeles firm. William Lipkin, a bankruptcy judge with 37 years of experience, resigned in 1984 to join a large New Jersey firm.

Both pointed out that the salary of a bankruptcy judge was low and that, as Judge Katz said:

> What ultimately became even more difficult to live with was that bankruptcy judges and magistrates have to pay 7% of their pre-tax earnings toward what turned out to be at best a very poor retirement system.

For the most part these experienced judges who leave the bench are being replaced by young attorneys who, although bright, assume their duties presiding over major cases without the wisdom of years and often without any business or bankruptcy experience at all. For example, in the Middle District of Tennessee in 1981 the two incumbent judges aged 44 and 48 resigned and were replaced by a judge 35 years old with no bankruptcy experience and a 30 year old judge with some bankruptcy experience. Judge Lipkin in New Jersey was replaced by a 31 year old attorney who had never been in the private practice of law.

The trend to younger judges is understandable. Young lawyers constitute the majority of those who apply for the position because today a bankruptcy judgeship is appealing only to a younger attorney who has the alternative of remaining on the court until he or she builds up the maximum retirement or, what is more likely, remaining until he or she builds up enough experience and reputation to become attractive to a large law firm. On the other hand, a bankruptcy judgeship with the present retirement system is not appealing to a lawyer who is forty or fifty years old. For example, it would be financially irresponsible for me, at age 55, to abandon my practice for a bankruptcy judgeship because under the present retirement program I could not build up a pension of more than one-third of my pay. In short, because of the present inadequate retirement system bankruptcy judges with experience cannot be retained and qualified mature attorneys cannot be recruited.

Moreover, I believe that without any adequate retirement provisions, the court will not be able to retain the new young judges. Eventually they too will be lured to the large law firms

which can offer good salaries and high retirement. The court will become, and in fact has become, a taxpayer supported training center for big firm lawyers.

This constant turnover on the bench also leads, as I said, to unpredictability and then to litigation. The problem is already upon us. Today, in the four districts of Texas, which have some of the most complex cases in the country, the twelve sitting judges have an average tenure of approximately twenty-four months. In the Southern District of New York in Manhattan the average tenure of judges is just over four years. In the Southern District of Ohio, where I practice, the average tenure of the three judges in Columbus is about twelve months, and the average tenure of the two judges in Dayton is approximately two years. The seven judges sitting in Chicago have an average tenure of under two years. It is almost impossible in these districts to advise clients about the outcome of a reasonably close bankruptcy question, and because parties cannot negotiate, they litigate. Thus, inexperienced judges are burdened with even more problems. While one might be able to calculate with some precision the cost of training new judges every year, the cost of this extra litigation because of high turnover on the bench cannot be calculated.

I believe it is important to retain the bankruptcy judges now sitting so that both business and the taxpayers can benefit from a consistent and stable bench. The news daily gives every indication that such a bankruptcy bench must be established soon. Providing adequate retirement benefits will send a good signal to the sitting judges that the Congress is concerned about these problems.

The Magistrates and Bankruptcy Judges Retirement Bill would, I believe, induce judges to resist the lure of the large firms and stay on the bench. The retirement benefits are attractive enough to cause judges to remain and remote enough to keep them working until age 65.

This bill will also enable the court to recruit more mature attorneys to the bankruptcy bench. It will make a bankruptcy judgeship appealing to those who are forty and fifty years old who must consider the retirement factor when changing careers. Were this retirement bill to become law, a bankruptcy judgeship could become attractive to me and to other former judges and attorneys to whom I have spoken during the past week. I am not advocating the wholesale rehiring of former judges, but am merely pointing out that should this bill become law the pool of attorneys available for consideration for appointment to the bankruptcy bench would be considerably larger and more experienced and once appointed the judges would be likely to remain in office.

Attached to this statement are the letters of former Judges Patton and Katz as Exhibits 1 and 2.

Exhibit 1

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October 19, 1987

Mr. John J. Dilenschneider, Chairman
Association of Former Bankruptcy Judges
Smith & Schnake
2250 The Huntington Center
41 South High Street
Columbus, Ohio 43215-6199

Dear John:

I left the bankruptcy bench in August of 1983 after 11½ years of service primarily because of the inadequate retirement benefits.

In 1983 I was 62 years old, my children were through college and my wife and I could live on the salary. However, the salary was not enough to fund my meaningful private investment program, so it was obvious that the retirement benefits that would be available would be completely inadequate.

On leaving the bench I immediately went into private practice and had no difficulty in negotiating a six-year employment contract by which I receive a present annual salary that is about 50% more than I was receiving as a judge PLUS deferred compensation after six years that will pay me $40,000 a year for life and, after my death, $30,000 a year for life to my wife, both subject to adjustment for cost-of-living increases.

I believe there are many present bankruptcy judges in their fifties or sixties who have the same concerns and would be pleased to stay if they had some assurance that they would not be faced with severe money problems after retirement. Unless the benefits are substantially increased, the older present judges will continue to leave in order to obtain security for their later years.

It is my observation that most of the newly - appointed bankruptcy judges are very young - mostly in their thirties. The older qualified attorneys may well not be seeking appointment because of the lack of adequate retirement. I believe that a provision for better retirement benefits would not only give more stability to the present bench but would result in better - qualified applicants for future appointments.

Sincerely,

E. H. Patton, Jr.

0626:2359

Exhibit 2

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October 18, 1987

John J. Dilenschneider, Esq.
Smith & Schnacke
2250 The Huntington Center
41 South High Street
Columbus, Ohio 43215-6199

Dear John:

Although a number of factors entered into my decision to leave the bench on March 15, 1983 after 11 years of service, the lack of salary and decent retirements certainly were among those factors. I realized when I took the bench, that as a federal judicial officer, my earnings would be limited. I took that calculated risk in part because I had assumed that Congress would assure that federal judicial officers would at least remain somewhat in the economic mainstream of life and that a federal retirement program would be of great benefit. However, in part because of the ravages of inflation and in greater part because of the inaction of Congress as well as the Judicial Conference of the United States Courts, the salaries of bankruptcy judges and magistrates continued a downward spiral which by 1983 had become intolerable. Although there were a number of pay raises received by the judiciary as a whole during my tenure on the bench, to my best recollection, at no time, were the raises given to bankruptcy judges and magistrates on the same level as those given to other federal judicial officers. As a result, instead of being maintained in the economic mainstream, it became increasingly difficult to maintain any decent standard of life on the salaries we were receiving. In fact the real buying power went down.

What ultimately became even more difficult to live with was that bankruptcy judges and magistrates have to pay 7% of their pre-tax earnings toward what turned out to be at best a very poor retirement system. While I recognize that the civil service retirement system, under which we were covered, is probably a very good system for those people who start in government service at an early age and are able to devote long years of service to the government, it is not a system which is very satisfactory to those people who enter government service rather late in life, as most of us did, and therefore do not have the ability to acquire sufficient longevity credit to truly obtain good retirement benefits.

While I recognize that governmental employment does not, cannot, and probably should not be competitive with the private sector, I firmly believe that service in the federal judiciary must be well compensated in order to attract the best people into service. Without adequate compensation and retirement, it is my belief that the federal judiciary as a whole, cannot attract and retain competent, young, energetic, hard-working lawyers into its folds. I would urge Congress to do what it can to raise the salaries and enhance the retirement programs not only bankruptcy judges and magistrates but the rest of the judiciary as well.

Very truly yours,

Herbert Katz
United States Bankruptcy Judge
(Retired)

HK/mc

Senator Thurmond's Question

In your prepared statement, you mentioned the costs associated with training new judges who replace those leaving the bench. The thrust of your position is that the Federal Government will realize substantial savings if S.1630 passes because more judges will remain on the bench, and it will not be necessary to expend funds to train new judges. Could you briefly comment on how much money the Federal Government will save if S.1630 passes?

Mr. Dilenschneider's Response

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December 8, 1987

The Honorable Howell Heflin
Chairman
Subcommittee on Courts and
Administrative Practice
Committee On The Judiciary
United States Senate
Hart Office Building, Room 728
Washington, DC 20510

Dear Senator Heflin:

In your letter to me dated November 3, 1987 you asked the following question.

> Judge Dilenschneider, in your prepared statement, you mentioned the costs associated with training new judges who replace those leaving the bench. The thrust of your position is that the Federal Government will realize substantial savings if S.1630 passes because more judges will remain on the bench,

> and it will not be necessary to expend funds to train new judges. Could you briefly comment on how much money the federal government will save if S. 1630 passes?

Unfortunately I am unable to answer that question. My testimony was directed not at the "training of new judges" but rather at the cost to the government and to private parties in increased litigation created by the constant turnover of judges. My statement with respect to costs was:

> While one may be able to calculate with some precision the cost of training new judges every year, the cost of this extra litigation because of high turnover on the bench cannot be calculated.

The savings to the government if judges were induced to complete their terms would arise from two factors. First, there are the direct savings, fewer judges would have to be trained through the seminars and conferences and "judges schools" now run by the government. Second, there are indirect savings, stability on the bench should decrease litigation because parties will know what each judge expects of them. Decreased litigation means less court time, lower backlog, less filing in the clerk's office and less proliferation of staff. It also means less costs to the litigants themselves.

These observations came from my twenty five years in the bankruptcy field as practitioner and judge, but I regret to say I cannot quantify the savings for you.

I appreciate the opportunity to respond further.

Very truly yours,

John J. Dilenschneider

JJD/wb

Senator HELFIN. Thank you. We appreciate your testimony. Let me ask a few questions.

This legislation provides retirement at full salary at the age of 65 for any magistrate or bankruptcy judge who has served for 14 years. Is there any provisions in this legislation that would provide an incentive for bankruptcy judges and magistrates to serve longer than 14 years, and should such a provision be included?

Any of you who would like to answer it.

Judge SEAR. I think, Mr. Chairman, that if we are able to have in place a structure that will induce bankruptcy judges to stay a full 14-year term, then they have, by that time, considering their average age of 45, reached the age where they would continue with the system.

They've had a successful tenure. They have served a full term. They have earned a full retirement. They can keep going just as we do in the life tenured sector as active judges or even continue to provide services to us as retired judges, recalled to active service, without costing any more money.

Senator HEFLIN. Bankruptcy judges and magistrates may elect not to be covered under the retirement system as provided in this bill and remain covered by their current civil service retirement plan.

What is the benefit in remaining in the present civil service plan?

Judge KELLEY. Let me take a hand at that, Senator. Most sitting bankruptcy judges would not be covered by civil service because they're covered by the new FERS. There are two small groups that are covered by civil service.

The Congress enhanced the retirement somewhat for us old judges so you got the same retirement there approximately that Congress used to have. The others have it minus social security.

The only reason for staying in the other plan is that you could retire at 60 as opposed to 65. I think this retirement legislation that's before us now has a very good benefit along these lines.

My appointment last year puts me into the next century. I'll be considerably up in years. When I reach age 65, if we still don't have enough judges to serve in our district, and I'm putting in nights or weekends, and I were to take senior status and carry still a good workload without creating a new judgeship, I would just have my space filled.

But we would both be there, but I'd be making full salary just like the ordinary Federal senior district judge as a bankruptcy judge, and I think it would be attractive to me to know that I could keep my insurance and benefits and keep serving in a senior status and have my salary.

So that would make me think I ought to get into the new system possibly. The only reason for staying in the other is if I just get so tired next year I got to drop out at age 60.

Judge SCHLESINGER. Senator, if I could go back to the question that you asked previously about the enticement.

Senator HEFLIN. I was going to ask about that.

Judge SCHLESINGER. It's not payable until you're 65, and if you leave earlier than 65, the retirement would be frozen at the salary when you left office, but you're dealing with a number of individ-

uals who are dedicated public servants or else they wouldn't be on the bench to begin with.

If they wanted to go out and make the big bucks, they wouldn't have gone on the bench to begin with. They're willing to continue making that sacrifice until age 65 to take the salary, and then as Judge Kelley said, take a recall or go on senior status so you would have this additional pool.

The incentive is you don't collect until you're 65, and they've lived with it for 14 years or more. As Judge Sear said, if you're 59 or 60, 5 more years you're going to stay on.

The pool that we would then be able to pick from is merely a larger pool. We're not straddled with going from the 35- to the 45-age group, but we can go from the 35- to the 55-age group.

If you get the more experienced higher caliber type of lawyer, they're going to be at the upper end, and 14 years on the bench is going to carry them almost until they're 65. So there would be no incentive to leave. They would want to stay until that age.

Senator HEFLIN. Now, the term of a magistrate is 8 years, and if he goes to a second-term appointment he reaches 14 years. There are still 2 more years left in his term. Is this going to cause any problem?

Judge SCHLESINGER. We don't believe so. The 14-year term was selected because that's the term of the bankruptcy judges. A magistrate who would have two terms would serve the 16 years. The same incentive to stay until you're 65 is going to be there regardless of how many more years that you have left on a term of service, and I would think that if you have somebody who may even be 60 when they hit their 16th year, they're going to apply to be reappointed for that additional term to carry it out until they're 65.

That's the incentive by having you don't collect until 65 in the bill. Under the regular civil service system, you can have that early retirement, and that may be why some people would opt to stay in under that system because they don't plan to avail themselves of the benefits of this new bill if it goes through, and then stay until that 65th birthday.

But I think Judge Kelley hit it on the head, and we have two article III judges who can tell you. Without the senior judges in this country, there's no doubt in my mind that the Federal judiciary would have collapsed.

But I have to keep repeating myself. The type of individuals that go into this for a lifetime of career service, they want to keep working after they're 65. It isn't a matter of, well, I'm 65 and now I'm going to retire and go fishing every day. Their life is such that they still want to maintain the job that they're doing and be productive in those courts, and I think you're going to see the same thing with bankruptcy judges and magistrates when we mesh the recall and the retirement provisions altogether that are now pending.

Senator HEFLIN. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I hope you'll let me take a detour. I want to ask Judge Kelley because he brought up about chapter 12 and because I had an interest in that, just how that's working out there. What do you hear from other judges?

The reason I ask the question is because just 1 year ago when we were working on it, we heard that the sky would fall in, and I want to know what the reality is compared to the rhetoric.

Judge KELLEY. The reality is that we have a number of confirmed chapter 12's. It has allowed the farmer a new way of getting relief in the bankruptcy court and there is a certain cram-down-type provision where actual value is involved regarding the farm land and so on.

There are still a few banks and financial institutions who yell, but when it's all said and done, if the farmer can reorganize and stay there and pay full value, they're not gnashing their teeth too hard, not in my country part of the State on any kind of the farms.

Enough lawyers have learned about it, and we're learning together and having many hearings. But based on history, we just let them recess, go fuss a little while, come back, hear some proof and what-not, and we're not dismissing most of ours. They're either being confirmed or continued and being worked out.

Now, I'm going to have to go back and have a big evaluation period on the one we didn't finish Monday, but I think it is a viable, new section with alternative relief and it's working pretty well.

Senator GRASSLEY. Thank you.

I have a question in relation to the salary increase adopted by the State-Justice-Commerce appropriation bill, and I believe that that's 92 percent of district judges, and that would be $82,000, is that right? That's what's in our Senate bill?

Judge SCHLESINGER. I believe it's about $82,340, to be exact.

Senator GRASSLEY. Let me ask you. Which is more important to you and your members, if you were forced to choose—and we all have to make tough choices today—would you rather have the "92-percent solution" on salary that was just arrived at or would you rather have a better retirement system, and why?

Judge SCHLESINGER. Well, first of all, we don't believe that the two are in the same package. The 92-percent pay is actually a technical correction to a problem that developed with the Quadrennial Pay Commission last year. We should have gotten that money until some staffer in the White House did something to the President's budget. It's merely a catchup type of provision.

I really, at this juncture, don't think that I'm capable of choosing which one of the two because we have two competing forces. Those that need the money today and those that need the money in retirement, and I don't know whether I'm capable of making that decision.

I don't know about Judge Kelley.

Senator HEFLIN. Well, I would think that a bird in the hand is worth two in the bush is the philosophy that ought to be followed.

Judge KELLEY. Senator, we will not reject anything that the Senate might approve, but most seriously, for years there has been a relationship when the salary of an article III judge rises in proportion, approximately 90 percent has been the percent paid to magistrates and/or bankruptcy judges.

Between the transmission from the Quadrennial Commission to the White House and to the Congress, that was reduced to 81 per-

cent, and then you have a contributory retirement system, and when you're paying that, it reduces it to about 70 percent.

That just floored the morale of a lot of people when that happened to them, and we hope that the technicality which is adjusted will be all right. It will be absorbed out of the judiciary budget without any increase in the appropriation. It's unanimously agreed to by the judiciary and the Administrative Office.

As you know, it's a package of whether you have satisfactory benefits, whether you're a Senator or a judge or anyone else. You be the judge and make the decision if you think it doesn't merit both going through. I pray that you consider both and have you a good bankruptcy bench.

Senator GRASSLEY. My question doesn't indicate that one has to be chosen over the other or that you can't have both, but I'm just saying let's suppose we didn't get the salary increase, if that were defeated in conference with the House, and I don't know what the prospects are, I think he indicated that it might be bad on morale for magistrates and bankruptcy judges.

But do you think that they would leave the bench if the retirement benefits as in this proposal would be passed and be adopted even if the salary increase was not there?

Judge KELLEY. I think it would slow it by having a better retirement system. I believe it would.

Judge SKOPIL. Senator Grassley, I know that the attitude of the U.S. Judicial Conference, as the result of what appeared to be an unfairness in that the bankruptcy people and the magistrates' salary increase as a result of the last budget request of the administration, was just so totally unfair by comparison to what their salary was percentagewise to district judges before, that they felt that this would be a means of going ahead and protecting against that unfairness in the future by establishing the bankruptcy and the magistrates salary at a percentage of the district judge's because that would not have happened had that been enacted before.

I think that was the main purpose. I think, as has been expressed, they both are needed in the situation. I don't think we can ever compete with the private sector as far as salary is concerned. That's for sure.

But I think we actually need to attract the people that can assume this responsibility and are competent people, but we really need both.

Senator GRASSLEY. Mr. Chairman, you covered my other questions.

Senator HEFLIN. Senator Thurmond.

Senator THURMOND. If you get your retirement without the increase in salary, of course, that would be some inducement. That would help. But the additional cost of the increase in salary really is infinitesimal compared with the appropriation for the whole judicial system.

I mean, if it's just, if it's right, if it's earned, well, we'll do it, and I think we ought to try to insist whoever is in conference, to hold out for this increase in salary and do all we can to get this retirement bill passed.

Mr. Chairman, I have another appointment I have to go to.

We are delighted to have you gentlemen with us, and I hope we can help you.

Judge SEAR. Thank you, Senator.

Judge KELLEY. Thank you, Senator.

Senator HEFLIN. Is there any problem that will exist between the Federal judges at age 65 in assuming senior status where the requirement is 15 years as compared to the 14 years with magistrates and bankruptcy judges?

Judge SEAR. I don't think so, Mr. Chairman. We know what our system is. From our point of view, judges for the most part do not retire. They go on to senior status. They maintain their activity on the bench, and it doesn't really make much difference except in what you call yourself. We still continue to work, thank goodness. We're permitted to do that.

Some do ultimately retire but not that many, and I don't think that there is any competition in that regard at all.

Senator HEFLIN. Thank you.

I'm delighted to see former Congressman Railsback and others here. You are able representatives of these groups, and we're delighted to have you present here.

If there are no other matters right now, we'll conclude these hearings.

[Whereupon, at 3:19 p.m., the subcommittee adjourned at the call of the Chair.]

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